

Appendix A
40 CFR part 68

Pt. 67, App. A

local agent, any noncompliance penalties owed by the source owner or operator shall be paid to the State or local agent.

**APPENDIX A TO PART 67—TECHNICAL
SUPPORT DOCUMENT**

NOTE: EPA will make copies of appendix A available from: Director, Stationary Source Compliance Division, EN-341, 401 M Street, SW., Washington, DC 20460.

[54 FR 25259, June 20, 1989]

**APPENDIX B TO PART 67—INSTRUCTION
MANUAL**

NOTE: EPA will make copies of appendix B available from: Director, Stationary Source Compliance Division, EN-341, 401 M Street, SW., Washington, DC 20460.

[54 FR 25259, June 20, 1989]

**APPENDIX C TO PART 67—COMPUTER
PROGRAM**

NOTE: EPA will make copies of appendix C available from: Director, Stationary Source Compliance Division, EN-341, 401 M Street, SW., Washington, DC 20460.

[54 FR 25259, June 20, 1989]

**PART 68—CHEMICAL ACCIDENT
PREVENTION PROVISIONS**

Subpart A—General

Sec.

- 68.1 Scope.
- 68.2 Stayed provisions.
- 68.3 Definitions.
- 68.10 Applicability.
- 68.12 General requirements.
- 68.15 Management.

Subpart B—Hazard Assessment

- 68.20 Applicability.
- 68.22 Offsite consequence analysis parameters.
- 68.25 Worst-case release scenario analysis.
- 68.28 Alternative release scenario analysis.
- 68.30 Defining offsite impacts—population.
- 68.33 Defining offsite impacts—environment.
- 68.36 Review and update.
- 68.39 Documentation.
- 68.42 Five-year accident history.

Subpart C—Program 2 Prevention Program

- 68.48 Safety information.
- 68.50 Hazard review.
- 68.52 Operating procedures.

40 CFR Ch. I (7–1–98 Edition)

- 68.54 Training.
- 68.56 Maintenance.
- 68.58 Compliance audits.
- 68.60 Incident investigation.

Subpart D—Program 3 Prevention Program

- 68.65 Process safety information.
- 68.67 Process hazard analysis.
- 68.69 Operating procedures.
- 68.71 Training.
- 68.73 Mechanical integrity.
- 68.75 Management of change.
- 68.77 Pre-startup review.
- 68.79 Compliance audits.
- 68.81 Incident investigation.
- 68.83 Employee participation.
- 68.85 Hot work permit.
- 68.87 Contractors.

Subpart E—Emergency Response

- 68.90 Applicability.
- 68.95 Emergency response program.

**Subpart F—Regulated Substances for
Accidental Release Prevention**

- 68.100 Purpose.
- 68.115 Threshold determination.
- 68.120 Petition process.
- 68.125 Exemptions.
- 68.130 List of substances.

Subpart G—Risk Management Plan

- 68.150 Submission.
- 68.155 Executive summary.
- 68.160 Registration.
- 68.165 Offsite consequence analysis.
- 68.168 Five-year accident history.
- 68.170 Prevention program/Program 2.
- 68.175 Prevention program/Program 3.
- 68.180 Emergency response program.
- 68.185 Certification.
- 68.190 Updates.

Subpart H—Other Requirements

- 68.200 Recordkeeping.
- 68.210 Availability of information to the public.
- 68.215 Permit content and air permitting authority or designated agency requirements.
- 68.220 Audits.

**APPENDIX A TO PART 68—TABLE OF TOXIC
ENDPOINTS**

AUTHORITY: 42 U.S.C. 7412(r), 7601(a)(1), 7661–7661f.

SOURCE: 59 FR 4493, Jan. 31, 1994, unless otherwise noted.

Subpart A—General**§ 68.1 Scope.**

This part sets forth the list of regulated substances and thresholds, the petition process for adding or deleting substances to the list of regulated substances, the requirements for owners or operators of stationary sources concerning the prevention of accidental releases, and the State accidental release prevention programs approved under section 112(r). The list of substances, threshold quantities, and accident prevention regulations promulgated under this part do not limit in any way the general duty provisions under section 112(r)(1).

§ 68.2 Stayed provisions.

(a) Notwithstanding any other provision of this part, the effectiveness of the following provisions is stayed from March 2, 1994 to December 22, 1997.

(1) In Sec. 68.3, the definition of “stationary source,” to the extent that such definition includes naturally occurring hydrocarbon reservoirs or transportation subject to oversight or regulation under a state natural gas or hazardous liquid program for which the state has in effect a certification to DOT under 49 U.S.C. 60105;

(2) Section 68.115(b)(2) of this part, to the extent that such provision requires an owner or operator to treat as a regulated flammable substance:

(i) Gasoline, when in distribution or related storage for use as fuel for internal combustion engines;

(ii) Naturally occurring hydrocarbon mixtures prior to entry into a petroleum refining process unit or a natural gas processing plant. Naturally occurring hydrocarbon mixtures include any of the following: condensate, crude oil, field gas, and produced water, each as defined in paragraph (b) of this section;

(iii) Other mixtures that contain a regulated flammable substance and that do not have a National Fire Protection Association flammability hazard rating of 4, the definition of which is in the NFPA 704, Standard System for the Identification of the Fire Hazards of Materials, National Fire Protection Association, Quincy, MA, 1990, available from the National Fire Pro-

tection Association, 1 Batterymarch Park, Quincy, MA 02269-9101; and

(3) Section 68.130(a).

(b) From March 2, 1994 to December 22, 1997, the following definitions shall apply to the stayed provisions described in paragraph (a) of this section:

Condensate means hydrocarbon liquid separated from natural gas that condenses because of changes in temperature, pressure, or both, and remains liquid at standard conditions.

Crude oil means any naturally occurring, unrefined petroleum liquid.

Field gas means gas extracted from a production well before the gas enters a natural gas processing plant.

Natural gas processing plant means any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of natural gas liquids to natural gas products, or both. A separator, dehydration unit, heater treater, sweetening unit, compressor, or similar equipment shall not be considered a “processing site” unless such equipment is physically located within a natural gas processing plant (gas plant) site.

Petroleum refining process unit means a process unit used in an establishment primarily engaged in petroleum refining as defined in the Standard Industrial Classification code for petroleum refining (2911) and used for the following: Producing transportation fuels (such as gasoline, diesel fuels, and jet fuels), heating fuels (such as kerosene, fuel gas distillate, and fuel oils), or lubricants; separating petroleum; or separating, cracking, reacting, or reforming intermediate petroleum streams. Examples of such units include, but are not limited to, petroleum based solvent units, alkylation units, catalytic hydrotreating, catalytic hydrorefining, catalytic hydrocracking, catalytic reforming, catalytic cracking, crude distillation, lube oil processing, hydrogen production, isomerization, polymerization, thermal processes, and blending, sweetening, and treating processes. Petroleum refining process units include sulfur plants.

Produced water means water extracted from the earth from an oil or natural gas production well, or that is

separated from oil or natural gas after extraction.

[59 FR 4493, Jan. 31, 1994, as amended at 61 FR 31731, June 20, 1996]

§ 68.3 Definitions.

For the purposes of this part:

Accidental release means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

Act means the Clean Air Act as amended (42 U.S.C. 7401 *et seq.*)

Administrative controls mean written procedural mechanisms used for hazard control.

Administrator means the administrator of the U.S. Environmental Protection Agency.

AICHE/CCPS means the American Institute of Chemical Engineers/Center for Chemical Process Safety.

API means the American Petroleum Institute.

Article means a manufactured item, as defined under 29 CFR 1910.1200(b), that is formed to a specific shape or design during manufacture, that has end use functions dependent in whole or in part upon the shape or design during end use, and that does not release or otherwise result in exposure to a regulated substance under normal conditions of processing and use.

ASME means the American Society of Mechanical Engineers.

CAS means the Chemical Abstracts Service.

Catastrophic release means a major uncontrolled emission, fire, or explosion, involving one or more regulated substances that presents imminent and substantial endangerment to public health and the environment.

Classified information means “classified information” as defined in the Classified Information Procedures Act, 18 U.S.C. App. 3, section 1(a) as “any information or material that has been determined by the United States Government pursuant to an executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security.”

Condensate means hydrocarbon liquid separated from natural gas that condenses due to changes in temperature,

pressure, or both, and remains liquid at standard conditions.

Covered process means a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115.

Crude oil means any naturally occurring, unrefined petroleum liquid.

Designated agency means the state, local, or Federal agency designated by the state under the provisions of § 68.215(d).

DOT means the United States Department of Transportation.

Environmental receptor means natural areas such as national or state parks, forests, or monuments; officially designated wildlife sanctuaries, preserves, refuges, or areas; and Federal wilderness areas, that could be exposed at any time to toxic concentrations, radiant heat, or overpressure greater than or equal to the endpoints provided in § 68.22(a), as a result of an accidental release and that can be identified on local U. S. Geological Survey maps.

Field gas means gas extracted from a production well before the gas enters a natural gas processing plant.

Hot work means work involving electric or gas welding, cutting, brazing, or similar flame or spark-producing operations.

Implementing agency means the state or local agency that obtains delegation for an accidental release prevention program under subpart E, 40 CFR part 63. The implementing agency may, but is not required to, be the state or local air permitting agency. If no state or local agency is granted delegation, EPA will be the implementing agency for that state.

Injury means any effect on a human that results either from direct exposure to toxic concentrations; radiant heat; or overpressures from accidental releases or from the direct consequences of a vapor cloud explosion (such as flying glass, debris, and other projectiles) from an accidental release and that requires medical treatment or hospitalization.

Major change means introduction of a new process, process equipment, or regulated substance, an alteration of process chemistry that results in any change to safe operating limits, or

other alteration that introduces a new hazard.

Mechanical integrity means the process of ensuring that process equipment is fabricated from the proper materials of construction and is properly installed, maintained, and replaced to prevent failures and accidental releases.

Medical treatment means treatment, other than first aid, administered by a physician or registered professional personnel under standing orders from a physician.

Mitigation or mitigation system means specific activities, technologies, or equipment designed or deployed to capture or control substances upon loss of containment to minimize exposure of the public or the environment. Passive mitigation means equipment, devices, or technologies that function without human, mechanical, or other energy input. Active mitigation means equipment, devices, or technologies that need human, mechanical, or other energy input to function.

NFPA means the National Fire Protection Association.

Natural gas processing plant (gas plant) means any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both, classified as North American Industrial Classification System (NAICS) code 211112 (previously Standard Industrial Classification (SIC) code 1321).

Offsite means areas beyond the property boundary of the stationary source, and areas within the property boundary to which the public has routine and unrestricted access during or outside business hours.

OSHA means the U.S. Occupational Safety and Health Administration. Owner or operator means any person who owns, leases, operates, controls, or supervises a stationary source.

Petroleum refining process unit means a process unit used in an establishment primarily engaged in petroleum refining as defined in NAICS code 32411 for petroleum refining (formerly SIC code 2911) and used for the following: Producing transportation fuels (such as gasoline, diesel fuels, and jet fuels), heating fuels (such as kerosene, fuel

gas distillate, and fuel oils), or lubricants; Separating petroleum; or Separating, cracking, reacting, or reforming intermediate petroleum streams. Examples of such units include, but are not limited to, petroleum based solvent units, alkylation units, catalytic hydrotreating, catalytic hydrorefining, catalytic hydrocracking, catalytic reforming, catalytic cracking, crude distillation, lube oil processing, hydrogen production, isomerization, polymerization, thermal processes, and blending, sweetening, and treating processes. Petroleum refining process units include sulfur plants.

Population means the public.

Process means any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

Produced water means water extracted from the earth from an oil or natural gas production well, or that is separated from oil or natural gas after extraction.

Public means any person except employees or contractors at the stationary source.

Public receptor means offsite residences, institutions (e.g., schools, hospitals), industrial, commercial, and office buildings, parks, or recreational areas inhabited or occupied by the public at any time without restriction by the stationary source where members of the public could be exposed to toxic concentrations, radiant heat, or overpressure, as a result of an accidental release.

Regulated substance is any substance listed pursuant to section 112(r)(3) of the Clean Air Act as amended, in § 68.130.

Replacement in kind means a replacement that satisfies the design specifications.

RMP means the risk management plan required under subpart G of this part.

SIC means Standard Industrial Classification.

Stationary source means any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur. The term stationary source does not apply to transportation, including storage incident to transportation, of any regulated substance or any other extremely hazardous substance under the provisions of this part. A stationary source includes transportation containers used for storage not incident to transportation and transportation containers connected to equipment at a stationary source for loading or unloading. Transportation includes, but is not limited to, transportation subject to oversight or regulation under 49 CFR parts 192, 193, or 195, or a state natural gas or hazardous liquid program for which the state has in effect a certification to DOT under 49 U.S.C. section 60105. A stationary source does not include naturally occurring hydrocarbon reservoirs. Properties shall not be considered contiguous solely because of a railroad or pipeline right-of-way.

Threshold quantity means the quantity specified for regulated substances pursuant to section 112(r)(5) of the Clean Air Act as amended, listed in § 68.130 and determined to be present at a stationary source as specified in § 68.115 of this part.

Typical meteorological conditions means the temperature, wind speed, cloud cover, and atmospheric stability class, prevailing at the site based on data gathered at or near the site or from a local meteorological station.

Vessel means any reactor, tank, drum, barrel, cylinder, vat, kettle, boiler, pipe, hose, or other container.

Worst-case release means the release of the largest quantity of a regulated substance from a vessel or process line failure that results in the greatest distance to an endpoint defined in § 68.22(a).

[59 FR 4493, Jan. 31, 1994, as amended at 61 FR 31717, June 20, 1996; 63 FR 644, Jan. 6, 1998]

§ 68.10 Applicability.

(a) An owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under § 68.115, shall comply with the requirements of this part no later than the latest of the following dates:

- (1) June 21, 1999;
- (2) Three years after the date on which a regulated substance is first listed under § 68.130; or
- (3) The date on which a regulated substance is first present above a threshold quantity in a process.

(b) Program 1 eligibility requirements. A covered process is eligible for Program 1 requirements as provided in § 68.12(b) if it meets all of the following requirements:

(1) For the five years prior to the submission of an RMP, the process has not had an accidental release of a regulated substance where exposure to the substance, its reaction products, overpressure generated by an explosion involving the substance, or radiant heat generated by a fire involving the substance led to any of the following off-site:

- (i) Death;
- (ii) Injury; or
- (iii) Response or restoration activities for an exposure of an environmental receptor;

(2) The distance to a toxic or flammable endpoint for a worst-case release assessment conducted under Subpart B and § 68.25 is less than the distance to any public receptor, as defined in § 68.30; and

(3) Emergency response procedures have been coordinated between the stationary source and local emergency planning and response organizations.

(c) Program 2 eligibility requirements. A covered process is subject to Program 2 requirements if it does not meet the eligibility requirements of either paragraph (b) or paragraph (d) of this section.

(d) Program 3 eligibility requirements. A covered process is subject to Program 3 if the process does not meet the requirements of paragraph (b) of this section, and if either of the following conditions is met:

(1) The process is in SIC code 2611, 2812, 2819, 2821, 2865, 2869, 2873, 2879, or 2911; or

(2) The process is subject to the OSHA process safety management standard, 29 CFR 1910.119.

(e) If at any time a covered process no longer meets the eligibility criteria of its Program level, the owner or operator shall comply with the requirements of the new Program level that applies to the process and update the RMP as provided in § 68.190.

(f) The provisions of this part shall not apply to an Outer Continental Shelf ("OCS") source, as defined in 40 CFR 55.2.

[61 FR 31717, June 20, 1996, as amended at 63 FR 645, Jan. 6, 1998]

§ 68.12 General requirements.

(a) General requirements. The owner or operator of a stationary source subject to this part shall submit a single RMP, as provided in §§ 68.150 to 68.185. The RMP shall include a registration that reflects all covered processes.

(b) Program 1 requirements. In addition to meeting the requirements of paragraph (a) of this section, the owner or operator of a stationary source with a process eligible for Program 1, as provided in § 68.10(b), shall:

(1) Analyze the worst-case release scenario for the process(es), as provided in § 68.25; document that the nearest public receptor is beyond the distance to a toxic or flammable endpoint defined in § 68.22(a); and submit in the RMP the worst-case release scenario as provided in § 68.165;

(2) Complete the five-year accident history for the process as provided in § 68.42 of this part and submit it in the RMP as provided in § 68.168;

(3) Ensure that response actions have been coordinated with local emergency planning and response agencies; and

(4) Certify in the RMP the following: "Based on the criteria in 40 CFR 68.10, the distance to the specified endpoint for the worst-case accidental release scenario for the following process(es) is less than the distance to the nearest public receptor: [list process(es)]. Within the past five years, the process(es) has (have) had no accidental release that caused offsite impacts provided in the risk management program rule (40

CFR 68.10(b)(1)). No additional measures are necessary to prevent offsite impacts from accidental releases. In the event of fire, explosion, or a release of a regulated substance from the process(es), entry within the distance to the specified endpoints may pose a danger to public emergency responders. Therefore, public emergency responders should not enter this area except as arranged with the emergency contact indicated in the RMP. The undersigned certifies that, to the best of my knowledge, information, and belief, formed after reasonable inquiry, the information submitted is true, accurate, and complete. [Signature, title, date signed]."

(c) Program 2 requirements. In addition to meeting the requirements of paragraph (a) of this section, the owner or operator of a stationary source with a process subject to Program 2, as provided in § 68.10(c), shall:

(1) Develop and implement a management system as provided in § 68.15;

(2) Conduct a hazard assessment as provided in §§ 68.20 through 68.42;

(3) Implement the Program 2 prevention steps provided in §§ 68.48 through 68.60 or implement the Program 3 prevention steps provided in §§ 68.65 through 68.87;

(4) Develop and implement an emergency response program as provided in §§ 68.90 to 68.95; and

(5) Submit as part of the RMP the data on prevention program elements for Program 2 processes as provided in § 68.170.

(d) Program 3 requirements. In addition to meeting the requirements of paragraph (a) of this section, the owner or operator of a stationary source with a process subject to Program 3, as provided in § 68.10(d) shall:

(1) Develop and implement a management system as provided in § 68.15;

(2) Conduct a hazard assessment as provided in §§ 68.20 through 68.42;

(3) Implement the prevention requirements of §§ 68.65 through 68.87;

(4) Develop and implement an emergency response program as provided in §§ 68.90 to 68.95 of this part; and

(5) Submit as part of the RMP the data on prevention program elements

for Program 3 processes as provided in § 68.175.

[61 FR 31718, June 20, 1996]

§ 68.15 Management.

(a) The owner or operator of a stationary source with processes subject to Program 2 or Program 3 shall develop a management system to oversee the implementation of the risk management program elements.

(b) The owner or operator shall assign a qualified person or position that has the overall responsibility for the development, implementation, and integration of the risk management program elements.

(c) When responsibility for implementing individual requirements of this part is assigned to persons other than the person identified under paragraph (b) of this section, the names or positions of these people shall be documented and the lines of authority defined through an organization chart or similar document.

[61 FR 31718, June 20, 1996]

Subpart B—Hazard Assessment

SOURCE: 61 FR 31718, June 20, 1996, unless otherwise noted.

§ 68.20 Applicability.

The owner or operator of a stationary source subject to this part shall prepare a worst-case release scenario analysis as provided in § 68.25 of this part and complete the five-year accident history as provided in § 68.42. The owner or operator of a Program 2 and 3 process must comply with all sections in this subpart for these processes.

§ 68.22 Offsite consequence analysis parameters.

(a) Endpoints. For analyses of offsite consequences, the following endpoints shall be used:

(1) Toxics. The toxic endpoints provided in appendix A of this part.

(2) Flammables. The endpoints for flammables vary according to the scenarios studied:

(i) Explosion. An overpressure of 1 psi.

(ii) Radiant heat/exposure time. A radiant heat of 5 kw/m² for 40 seconds.

(iii) Lower flammability limit. A lower flammability limit as provided in NFPA documents or other generally recognized sources.

(b) Wind speed/atmospheric stability class. For the worst-case release analysis, the owner or operator shall use a wind speed of 1.5 meters per second and F atmospheric stability class. If the owner or operator can demonstrate that local meteorological data applicable to the stationary source show a higher minimum wind speed or less stable atmosphere at all times during the previous three years, these minimums may be used. For analysis of alternative scenarios, the owner or operator may use the typical meteorological conditions for the stationary source.

(c) Ambient temperature/humidity. For worst-case release analysis of a regulated toxic substance, the owner or operator shall use the highest daily maximum temperature in the previous three years and average humidity for the site, based on temperature/humidity data gathered at the stationary source or at a local meteorological station; an owner or operator using the RMP Offsite Consequence Analysis Guidance may use 25°C and 50 percent humidity as values for these variables. For analysis of alternative scenarios, the owner or operator may use typical temperature/humidity data gathered at the stationary source or at a local meteorological station.

(d) Height of release. The worst-case release of a regulated toxic substance shall be analyzed assuming a ground level (0 feet) release. For an alternative scenario analysis of a regulated toxic substance, release height may be determined by the release scenario.

(e) Surface roughness. The owner or operator shall use either urban or rural topography, as appropriate. Urban means that there are many obstacles in the immediate area; obstacles include buildings or trees. Rural means there are no buildings in the immediate area and the terrain is generally flat and unobstructed.

(f) Dense or neutrally buoyant gases. The owner or operator shall ensure that tables or models used for dispersion analysis of regulated toxic substances appropriately account for gas density.

(g) Temperature of released substance. For worst case, liquids other than gases liquified by refrigeration only shall be considered to be released at the highest daily maximum temperature, based on data for the previous three years appropriate for the stationary source, or at process temperature, whichever is higher. For alternative scenarios, substances may be considered to be released at a process or ambient temperature that is appropriate for the scenario.

§ 68.25 Worst-case release scenario analysis.

(a) The owner or operator shall analyze and report in the RMP:

(1) For Program 1 processes, one worst-case release scenario for each Program 1 process;

(2) For Program 2 and 3 processes:

(i) One worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint provided in appendix A of this part resulting from an accidental release of regulated toxic substances from covered processes under worst-case conditions defined in § 68.22;

(ii) One worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint defined in § 68.22(a) resulting from an accidental release of regulated flammable substances from covered processes under worst-case conditions defined in § 68.22; and

(iii) Additional worst-case release scenarios for a hazard class if a worst-case release from another covered process at the stationary source potentially affects public receptors different from those potentially affected by the worst-case release scenario developed under paragraphs (a)(2)(i) or (a)(2)(ii) of this section.

(b) *Determination of worst-case release quantity.* The worst-case release quantity shall be the greater of the following:

(1) For substances in a vessel, the greatest amount held in a single vessel, taking into account administrative controls that limit the maximum quantity; or

(2) For substances in pipes, the greatest amount in a pipe, taking into ac-

count administrative controls that limit the maximum quantity.

(c) *Worst-case release scenario—toxic gases.* (1) For regulated toxic substances that are normally gases at ambient temperature and handled as a gas or as a liquid under pressure, the owner or operator shall assume that the quantity in the vessel or pipe, as determined under paragraph (b) of this section, is released as a gas over 10 minutes. The release rate shall be assumed to be the total quantity divided by 10 unless passive mitigation systems are in place.

(2) For gases handled as refrigerated liquids at ambient pressure:

(i) If the released substance is not contained by passive mitigation systems or if the contained pool would have a depth of 1 cm or less, the owner or operator shall assume that the substance is released as a gas in 10 minutes;

(ii) If the released substance is contained by passive mitigation systems in a pool with a depth greater than 1 cm, the owner or operator may assume that the quantity in the vessel or pipe, as determined under paragraph (b) of this section, is spilled instantaneously to form a liquid pool. The volatilization rate (release rate) shall be calculated at the boiling point of the substance and at the conditions specified in paragraph (d) of this section.

(d) *Worst-case release scenario—toxic liquids.* (1) For regulated toxic substances that are normally liquids at ambient temperature, the owner or operator shall assume that the quantity in the vessel or pipe, as determined under paragraph (b) of this section, is spilled instantaneously to form a liquid pool.

(i) The surface area of the pool shall be determined by assuming that the liquid spreads to 1 centimeter deep unless passive mitigation systems are in place that serve to contain the spill and limit the surface area. Where passive mitigation is in place, the surface area of the contained liquid shall be used to calculate the volatilization rate.

(ii) If the release would occur onto a surface that is not paved or smooth, the owner or operator may take into

account the actual surface characteristics.

(2) The volatilization rate shall account for the highest daily maximum temperature occurring in the past three years, the temperature of the substance in the vessel, and the concentration of the substance if the liquid spilled is a mixture or solution.

(3) The rate of release to air shall be determined from the volatilization rate of the liquid pool. The owner or operator may use the methodology in the RMP Offsite Consequence Analysis Guidance or any other publicly available techniques that account for the modeling conditions and are recognized by industry as applicable as part of current practices. Proprietary models that account for the modeling conditions may be used provided the owner or operator allows the implementing agency access to the model and describes model features and differences from publicly available models to local emergency planners upon request.

(e) *Worst-case release scenario—flammables.* The owner or operator shall assume that the quantity of the substance, as determined under paragraph (b) of this section, vaporizes resulting in a vapor cloud explosion. A yield factor of 10 percent of the available energy released in the explosion shall be used to determine the distance to the explosion endpoint if the model used is based on TNT-equivalent methods.

(f) *Parameters to be applied.* The owner or operator shall use the parameters defined in § 68.22 to determine distance to the endpoints. The owner or operator may use the methodology provided in the RMP Offsite Consequence Analysis Guidance or any commercially or publicly available air dispersion modeling techniques, provided the techniques account for the modeling conditions and are recognized by industry as applicable as part of current practices. Proprietary models that account for the modeling conditions may be used provided the owner or operator allows the implementing agency access to the model and describes model features and differences from publicly available models to local emergency planners upon request.

(g) *Consideration of passive mitigation.* Passive mitigation systems may be

considered for the analysis of worst case provided that the mitigation system is capable of withstanding the release event triggering the scenario and would still function as intended.

(h) *Factors in selecting a worst-case scenario.* Notwithstanding the provisions of paragraph (b) of this section, the owner or operator shall select as the worst case for flammable regulated substances or the worst case for regulated toxic substances, a scenario based on the following factors if such a scenario would result in a greater distance to an endpoint defined in § 68.22(a) beyond the stationary source boundary than the scenario provided under paragraph (b) of this section:

(1) Smaller quantities handled at higher process temperature or pressure; and

(2) Proximity to the boundary of the stationary source.

§ 68.28 Alternative release scenario analysis.

(a) The number of scenarios. The owner or operator shall identify and analyze at least one alternative release scenario for each regulated toxic substance held in a covered process(es) and at least one alternative release scenario to represent all flammable substances held in covered processes.

(b) *Scenarios to consider.* (1) For each scenario required under paragraph (a) of this section, the owner or operator shall select a scenario:

(i) That is more likely to occur than the worst-case release scenario under § 68.25; and

(ii) That will reach an endpoint off-site, unless no such scenario exists.

(2) Release scenarios considered should include, but are not limited to, the following, where applicable:

(i) Transfer hose releases due to splits or sudden hose uncoupling;

(ii) Process piping releases from failures at flanges, joints, welds, valves and valve seals, and drains or bleeds;

(iii) Process vessel or pump releases due to cracks, seal failure, or drain, bleed, or plug failure;

(iv) Vessel overfilling and spill, or overpressurization and venting through relief valves or rupture disks; and

(v) Shipping container mishandling and breakage or puncturing leading to a spill.

(c) Parameters to be applied. The owner or operator shall use the appropriate parameters defined in § 68.22 to determine distance to the endpoints. The owner or operator may use either the methodology provided in the RMP Offsite Consequence Analysis Guidance or any commercially or publicly available air dispersion modeling techniques, provided the techniques account for the specified modeling conditions and are recognized by industry as applicable as part of current practices. Proprietary models that account for the modeling conditions may be used provided the owner or operator allows the implementing agency access to the model and describes model features and differences from publicly available models to local emergency planners upon request.

(d) Consideration of mitigation. Active and passive mitigation systems may be considered provided they are capable of withstanding the event that triggered the release and would still be functional.

(e) Factors in selecting scenarios. The owner or operator shall consider the following in selecting alternative release scenarios:

(1) The five-year accident history provided in § 68.42; and

(2) Failure scenarios identified under § 68.50 or § 68.67.

§ 68.30 Defining offsite impacts—population.

(a) The owner or operator shall estimate in the RMP the population within a circle with its center at the point of the release and a radius determined by the distance to the endpoint defined in § 68.22(a).

(b) *Population to be defined.* Population shall include residential population. The presence of institutions (schools, hospitals, prisons), parks and recreational areas, and major commercial, office, and industrial buildings shall be noted in the RMP.

(c) *Data sources acceptable.* The owner or operator may use the most recent Census data, or other updated information, to estimate the population potentially affected.

(d) *Level of accuracy.* Population shall be estimated to two significant digits.

§ 68.33 Defining offsite impacts—environment.

(a) The owner or operator shall list in the RMP environmental receptors within a circle with its center at the point of the release and a radius determined by the distance to the endpoint defined in § 68.22(a) of this part.

(b) Data sources acceptable. The owner or operator may rely on information provided on local U.S. Geological Survey maps or on any data source containing U.S.G.S. data to identify environmental receptors.

68.36 Review and update.

(a) The owner or operator shall review and update the offsite consequence analyses at least once every five years.

(b) If changes in processes, quantities stored or handled, or any other aspect of the stationary source might reasonably be expected to increase or decrease the distance to the endpoint by a factor of two or more, the owner or operator shall complete a revised analysis within six months of the change and submit a revised risk management plan as provided in § 68.190.

§ 68.39 Documentation.

The owner or operator shall maintain the following records on the offsite consequence analyses:

(a) For worst-case scenarios, a description of the vessel or pipeline and substance selected as worst case, assumptions and parameters used, and the rationale for selection; assumptions shall include use of any administrative controls and any passive mitigation that were assumed to limit the quantity that could be released. Documentation shall include the anticipated effect of the controls and mitigation on the release quantity and rate.

(b) For alternative release scenarios, a description of the scenarios identified, assumptions and parameters used, and the rationale for the selection of specific scenarios; assumptions shall include use of any administrative controls and any mitigation that were assumed to limit the quantity that could

be released. Documentation shall include the effect of the controls and mitigation on the release quantity and rate.

(c) Documentation of estimated quantity released, release rate, and duration of release.

(d) Methodology used to determine distance to endpoints.

(e) Data used to estimate population and environmental receptors potentially affected.

§ 68.42 Five-year accident history.

(a) The owner or operator shall include in the five-year accident history all accidental releases from covered processes that resulted in deaths, injuries, or significant property damage on site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage.

(b) *Data required.* For each accidental release included, the owner or operator shall report the following information:

(1) Date, time, and approximate duration of the release;

(2) Chemical(s) released;

(3) Estimated quantity released in pounds;

(4) The type of release event and its source;

(5) Weather conditions, if known;

(6) On-site impacts;

(7) Known offsite impacts;

(8) Initiating event and contributing factors if known;

(9) Whether offsite responders were notified if known; and

(10) Operational or process changes that resulted from investigation of the release.

(c) *Level of accuracy.* Numerical estimates may be provided to two significant digits.

Subpart C—Program 2 Prevention Program

SOURCE: 61 FR 31721, June 20, 1996, unless otherwise noted.

§ 68.48 Safety information.

(a) The owner or operator shall compile and maintain the following up-to-date safety information related to the

regulated substances, processes, and equipment:

(1) Material Safety Data Sheets that meet the requirements of 29 CFR 1910.1200(g);

(2) Maximum intended inventory of equipment in which the regulated substances are stored or processed;

(3) Safe upper and lower temperatures, pressures, flows, and compositions;

(4) Equipment specifications; and

(5) Codes and standards used to design, build, and operate the process.

(b) The owner or operator shall ensure that the process is designed in compliance with recognized and generally accepted good engineering practices. Compliance with Federal or state regulations that address industry-specific safe design or with industry-specific design codes and standards may be used to demonstrate compliance with this paragraph.

(c) The owner or operator shall update the safety information if a major change occurs that makes the information inaccurate.

§ 68.50 Hazard review.

(a) The owner or operator shall conduct a review of the hazards associated with the regulated substances, process, and procedures. The review shall identify the following:

(1) The hazards associated with the process and regulated substances;

(2) Opportunities for equipment malfunctions or human errors that could cause an accidental release;

(3) The safeguards used or needed to control the hazards or prevent equipment malfunction or human error; and

(4) Any steps used or needed to detect or monitor releases.

(b) The owner or operator may use checklists developed by persons or organizations knowledgeable about the process and equipment as a guide to conducting the review. For processes designed to meet industry standards or Federal or state design rules, the hazard review shall, by inspecting all equipment, determine whether the process is designed, fabricated, and operated in accordance with the applicable standards or rules.

Environmental Protection Agency

§ 68.56

(c) The owner or operator shall document the results of the review and ensure that problems identified are resolved in a timely manner.

(d) The review shall be updated at least once every five years. The owner or operator shall also conduct reviews whenever a major change in the process occurs; all issues identified in the review shall be resolved before startup of the changed process.

§ 68.52 Operating procedures.

(a) The owner or operator shall prepare written operating procedures that provide clear instructions or steps for safely conducting activities associated with each covered process consistent with the safety information for that process. Operating procedures or instructions provided by equipment manufacturers or developed by persons or organizations knowledgeable about the process and equipment may be used as a basis for a stationary source's operating procedures.

(b) The procedures shall address the following:

- (1) Initial startup;
- (2) Normal operations;
- (3) Temporary operations;
- (4) Emergency shutdown and operations;
- (5) Normal shutdown;
- (6) Startup following a normal or emergency shutdown or a major change that requires a hazard review;
- (7) Consequences of deviations and steps required to correct or avoid deviations; and
- (8) Equipment inspections.

(c) The owner or operator shall ensure that the operating procedures are updated, if necessary, whenever a major change occurs and prior to startup of the changed process.

§ 68.54 Training.

(a) The owner or operator shall ensure that each employee presently operating a process, and each employee newly assigned to a covered process have been trained or tested competent in the operating procedures provided in § 68.52 that pertain to their duties. For those employees already operating a process on June 21, 1999, the owner or operator may certify in writing that the employee has the required knowl-

edge, skills, and abilities to safely carry out the duties and responsibilities as provided in the operating procedures.

(b) Refresher training. Refresher training shall be provided at least every three years, and more often if necessary, to each employee operating a process to ensure that the employee understands and adheres to the current operating procedures of the process. The owner or operator, in consultation with the employees operating the process, shall determine the appropriate frequency of refresher training.

(c) The owner or operator may use training conducted under Federal or state regulations or under industry-specific standards or codes or training conducted by covered process equipment vendors to demonstrate compliance with this section to the extent that the training meets the requirements of this section.

(d) The owner or operator shall ensure that operators are trained in any updated or new procedures prior to startup of a process after a major change.

§ 68.56 Maintenance.

(a) The owner or operator shall prepare and implement procedures to maintain the on-going mechanical integrity of the process equipment. The owner or operator may use procedures or instructions provided by covered process equipment vendors or procedures in Federal or state regulations or industry codes as the basis for stationary source maintenance procedures.

(b) The owner or operator shall train or cause to be trained each employee involved in maintaining the on-going mechanical integrity of the process. To ensure that the employee can perform the job tasks in a safe manner, each such employee shall be trained in the hazards of the process, in how to avoid or correct unsafe conditions, and in the procedures applicable to the employee's job tasks.

(c) Any maintenance contractor shall ensure that each contract maintenance employee is trained to perform the maintenance procedures developed under paragraph (a) of this section.

§ 68.58

(d) The owner or operator shall perform or cause to be performed inspections and tests on process equipment. Inspection and testing procedures shall follow recognized and generally accepted good engineering practices. The frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations, industry standards or codes, good engineering practices, and prior operating experience.

§ 68.58 Compliance audits.

(a) The owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that the procedures and practices developed under the rule are adequate and are being followed.

(b) The compliance audit shall be conducted by at least one person knowledgeable in the process.

(c) The owner or operator shall develop a report of the audit findings.

(d) The owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit and document that deficiencies have been corrected.

(e) The owner or operator shall retain the two (2) most recent compliance audit reports. This requirement does not apply to any compliance audit report that is more than five years old.

§ 68.60 Incident investigation.

(a) The owner or operator shall investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release.

(b) An incident investigation shall be initiated as promptly as possible, but not later than 48 hours following the incident.

(c) A summary shall be prepared at the conclusion of the investigation which includes at a minimum:

- (1) Date of incident;
- (2) Date investigation began;
- (3) A description of the incident;
- (4) The factors that contributed to the incident; and,
- (5) Any recommendations resulting from the investigation.

(d) The owner or operator shall promptly address and resolve the inves-

40 CFR Ch. I (7-1-98 Edition)

tigation findings and recommendations. Resolutions and corrective actions shall be documented.

(e) The findings shall be reviewed with all affected personnel whose job tasks are affected by the findings.

(f) Investigation summaries shall be retained for five years.

Subpart D—Program 3 Prevention Program

SOURCE: 61 FR 31722, June 20, 1996, unless otherwise noted.

§ 68.65 Process safety information.

(a) In accordance with the schedule set forth in § 68.67, the owner or operator shall complete a compilation of written process safety information before conducting any process hazard analysis required by the rule. The compilation of written process safety information is to enable the owner or operator and the employees involved in operating the process to identify and understand the hazards posed by those processes involving regulated substances. This process safety information shall include information pertaining to the hazards of the regulated substances used or produced by the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process.

(b) Information pertaining to the hazards of the regulated substances in the process. This information shall consist of at least the following:

- (1) Toxicity information;
- (2) Permissible exposure limits;
- (3) Physical data;
- (4) Reactivity data;
- (5) Corrosivity data;
- (6) Thermal and chemical stability data; and
- (7) Hazardous effects of inadvertent mixing of different materials that could foreseeably occur.

NOTE TO PARAGRAPH (b): Material Safety Data Sheets meeting the requirements of 29 CFR 1910.1200(g) may be used to comply with this requirement to the extent they contain the information required by this subparagraph.

(c) Information pertaining to the technology of the process.

(1) Information concerning the technology of the process shall include at least the following:

- (i) A block flow diagram or simplified process flow diagram;
- (ii) Process chemistry;
- (iii) Maximum intended inventory;
- (iv) Safe upper and lower limits for such items as temperatures, pressures, flows or compositions; and,
- (v) An evaluation of the consequences of deviations.

(2) Where the original technical information no longer exists, such information may be developed in conjunction with the process hazard analysis in sufficient detail to support the analysis.

(d) Information pertaining to the equipment in the process.

(1) Information pertaining to the equipment in the process shall include:

- (i) Materials of construction;
- (ii) Piping and instrument diagrams (P&ID's);
- (iii) Electrical classification;
- (iv) Relief system design and design basis;
- (v) Ventilation system design;
- (vi) Design codes and standards employed;
- (vii) Material and energy balances for processes built after June 21, 1999; and
- (viii) Safety systems (e.g. interlocks, detection or suppression systems).

(2) The owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices.

(3) For existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use, the owner or operator shall determine and document that the equipment is designed, maintained, inspected, tested, and operating in a safe manner.

§ 68.67 Process hazard analysis.

(a) The owner or operator shall perform an initial process hazard analysis (hazard evaluation) on processes covered by this part. The process hazard analysis shall be appropriate to the complexity of the process and shall identify, evaluate, and control the hazards involved in the process. The owner or operator shall determine and document the priority order for conducting

process hazard analyses based on a rationale which includes such considerations as extent of the process hazards, number of potentially affected employees, age of the process, and operating history of the process. The process hazard analysis shall be conducted as soon as possible, but not later than June 21, 1999. Process hazards analyses completed to comply with 29 CFR 1910.119(e) are acceptable as initial process hazards analyses. These process hazard analyses shall be updated and revalidated, based on their completion date.

(b) The owner or operator shall use one or more of the following methodologies that are appropriate to determine and evaluate the hazards of the process being analyzed.

- (1) What-If;
- (2) Checklist;
- (3) What-If/Checklist;
- (4) Hazard and Operability Study (HAZOP);
- (5) Failure Mode and Effects Analysis (FMEA);
- (6) Fault Tree Analysis; or
- (7) An appropriate equivalent methodology.

(c) The process hazard analysis shall address:

- (1) The hazards of the process;
- (2) The identification of any previous incident which had a likely potential for catastrophic consequences.

(3) Engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases. (Acceptable detection methods might include process monitoring and control instrumentation with alarms, and detection hardware such as hydrocarbon sensors.);

(4) Consequences of failure of engineering and administrative controls;

- (5) Stationary source siting;
- (6) Human factors; and
- (7) A qualitative evaluation of a range of the possible safety and health effects of failure of controls.

(d) The process hazard analysis shall be performed by a team with expertise in engineering and process operations, and the team shall include at least one employee who has experience and knowledge specific to the process being

evaluated. Also, one member of the team must be knowledgeable in the specific process hazard analysis methodology being used.

(e) The owner or operator shall establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions.

(f) At least every five (5) years after the completion of the initial process hazard analysis, the process hazard analysis shall be updated and revalidated by a team meeting the requirements in paragraph (d) of this section, to assure that the process hazard analysis is consistent with the current process. Updated and revalidated process hazard analyses completed to comply with 29 CFR 1910.119(e) are acceptable to meet the requirements of this paragraph.

(g) The owner or operator shall retain process hazards analyses and updates or revalidations for each process covered by this section, as well as the documented resolution of recommendations described in paragraph (e) of this section for the life of the process.

§ 68.69 Operating procedures.

(a) The owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements.

- (1) Steps for each operating phase:
 - (i) Initial startup;
 - (ii) Normal operations;
 - (iii) Temporary operations;
 - (iv) Emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that

emergency shutdown is executed in a safe and timely manner.

- (v) Emergency operations;
- (vi) Normal shutdown; and,
- (vii) Startup following a turnaround, or after an emergency shutdown.

(2) Operating limits:

- (i) Consequences of deviation; and
- (ii) Steps required to correct or avoid deviation.

(3) Safety and health considerations:

- (i) Properties of, and hazards presented by, the chemicals used in the process;

(ii) Precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment;

(iii) Control measures to be taken if physical contact or airborne exposure occurs;

(iv) Quality control for raw materials and control of hazardous chemical inventory levels; and,

(v) Any special or unique hazards.

(4) Safety systems and their functions.

(b) Operating procedures shall be readily accessible to employees who work in or maintain a process.

(c) The operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. The owner or operator shall certify annually that these operating procedures are current and accurate.

(d) The owner or operator shall develop and implement safe work practices to provide for the control of hazards during operations such as lockout/tagout; confined space entry; opening process equipment or piping; and control over entrance into a stationary source by maintenance, contractor, laboratory, or other support personnel. These safe work practices shall apply to employees and contractor employees.

§ 68.71 Training.

(a) *Initial training.* (1) Each employee presently involved in operating a process, and each employee before being involved in operating a newly assigned process, shall be trained in an overview

of the process and in the operating procedures as specified in § 68.69. The training shall include emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks.

(2) In lieu of initial training for those employees already involved in operating a process on June 21, 1999 an owner or operator may certify in writing that the employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as specified in the operating procedures.

(b) *Refresher training.* Refresher training shall be provided at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process. The owner or operator, in consultation with the employees involved in operating the process, shall determine the appropriate frequency of refresher training.

(c) *Training documentation.* The owner or operator shall ascertain that each employee involved in operating a process has received and understood the training required by this paragraph. The owner or operator shall prepare a record which contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training.

§ 68.73 Mechanical integrity.

(a) *Application.* Paragraphs (b) through (f) of this section apply to the following process equipment:

- (1) Pressure vessels and storage tanks;
- (2) Piping systems (including piping components such as valves);
- (3) Relief and vent systems and devices;
- (4) Emergency shutdown systems;
- (5) Controls (including monitoring devices and sensors, alarms, and interlocks) and,
- (6) Pumps.

(b) *Written procedures.* The owner or operator shall establish and implement written procedures to maintain the on-going integrity of process equipment.

(c) *Training for process maintenance activities.* The owner or operator shall train each employee involved in maintaining the on-going integrity of process equipment in an overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner.

(d) *Inspection and testing.* (1) Inspections and tests shall be performed on process equipment.

(2) Inspection and testing procedures shall follow recognized and generally accepted good engineering practices.

(3) The frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience.

(4) The owner or operator shall document each inspection and test that has been performed on process equipment. The documentation shall identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.

(e) *Equipment deficiencies.* The owner or operator shall correct deficiencies in equipment that are outside acceptable limits (defined by the process safety information in § 68.65) before further use or in a safe and timely manner when necessary means are taken to assure safe operation.

(f) *Quality assurance.* (1) In the construction of new plants and equipment, the owner or operator shall assure that equipment as it is fabricated is suitable for the process application for which they will be used.

(2) Appropriate checks and inspections shall be performed to assure that equipment is installed properly and consistent with design specifications and the manufacturer's instructions.

(3) The owner or operator shall assure that maintenance materials, spare parts and equipment are suitable for the process application for which they will be used.

§ 68.75 Management of change.

(a) The owner or operator shall establish and implement written procedures to manage changes (except for “replacements in kind”) to process chemicals, technology, equipment, and procedures; and, changes to stationary sources that affect a covered process.

(b) The procedures shall assure that the following considerations are addressed prior to any change:

- (1) The technical basis for the proposed change;
- (2) Impact of change on safety and health;
- (3) Modifications to operating procedures;
- (4) Necessary time period for the change; and,
- (5) Authorization requirements for the proposed change.

(c) Employees involved in operating a process and maintenance and contract employees whose job tasks will be affected by a change in the process shall be informed of, and trained in, the change prior to start-up of the process or affected part of the process.

(d) If a change covered by this paragraph results in a change in the process safety information required by § 68.65 of this part, such information shall be updated accordingly.

(e) If a change covered by this paragraph results in a change in the operating procedures or practices required by § 68.69, such procedures or practices shall be updated accordingly.

§ 68.77 Pre-startup review.

(a) The owner or operator shall perform a pre-startup safety review for new stationary sources and for modified stationary sources when the modification is significant enough to require a change in the process safety information.

(b) The pre-startup safety review shall confirm that prior to the introduction of regulated substances to a process:

- (1) Construction and equipment is in accordance with design specifications;
- (2) Safety, operating, maintenance, and emergency procedures are in place and are adequate;
- (3) For new stationary sources, a process hazard analysis has been performed and recommendations have

been resolved or implemented before startup; and modified stationary sources meet the requirements contained in management of change, § 68.75.

(4) Training of each employee involved in operating a process has been completed.

§ 68.79 Compliance audits.

(a) The owner or operator shall certify that they have evaluated compliance with the provisions of this section at least every three years to verify that the procedures and practices developed under the standard are adequate and are being followed.

(b) The compliance audit shall be conducted by at least one person knowledgeable in the process.

(c) A report of the findings of the audit shall be developed.

(d) The owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

(e) The owner or operator shall retain the two (2) most recent compliance audit reports.

§ 68.81 Incident investigation.

(a) The owner or operator shall investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release of a regulated substance.

(b) An incident investigation shall be initiated as promptly as possible, but not later than 48 hours following the incident.

(c) An incident investigation team shall be established and consist of at least one person knowledgeable in the process involved, including a contract employee if the incident involved work of the contractor, and other persons with appropriate knowledge and experience to thoroughly investigate and analyze the incident.

(d) A report shall be prepared at the conclusion of the investigation which includes at a minimum:

- (1) Date of incident;
- (2) Date investigation began;
- (3) A description of the incident;
- (4) The factors that contributed to the incident; and,

(5) Any recommendations resulting from the investigation.

(e) The owner or operator shall establish a system to promptly address and resolve the incident report findings and recommendations. Resolutions and corrective actions shall be documented.

(f) The report shall be reviewed with all affected personnel whose job tasks are relevant to the incident findings including contract employees where applicable.

(g) Incident investigation reports shall be retained for five years.

§ 68.83 Employee participation.

(a) The owner or operator shall develop a written plan of action regarding the implementation of the employee participation required by this section.

(b) The owner or operator shall consult with employees and their representatives on the conduct and development of process hazards analyses and on the development of the other elements of process safety management in this rule.

(c) The owner or operator shall provide to employees and their representatives access to process hazard analyses and to all other information required to be developed under this rule.

§ 68.85 Hot work permit.

(a) The owner or operator shall issue a hot work permit for hot work operations conducted on or near a covered process.

(b) The permit shall document that the fire prevention and protection requirements in 29 CFR 1910.252(a) have been implemented prior to beginning the hot work operations; it shall indicate the date(s) authorized for hot work; and identify the object on which hot work is to be performed. The permit shall be kept on file until completion of the hot work operations.

§ 68.87 Contractors.

(a) *Application.* This section applies to contractors performing maintenance or repair, turnaround, major renovation, or specialty work on or adjacent to a covered process. It does not apply to contractors providing incidental services which do not influence process safety, such as janitorial work, food

and drink services, laundry, delivery or other supply services.

(b) *Owner or operator responsibilities.*

(1) The owner or operator, when selecting a contractor, shall obtain and evaluate information regarding the contract owner or operator's safety performance and programs.

(2) The owner or operator shall inform contract owner or operator of the known potential fire, explosion, or toxic release hazards related to the contractor's work and the process.

(3) The owner or operator shall explain to the contract owner or operator the applicable provisions of subpart E of this part.

(4) The owner or operator shall develop and implement safe work practices consistent with § 68.69(d), to control the entrance, presence, and exit of the contract owner or operator and contract employees in covered process areas.

(5) The owner or operator shall periodically evaluate the performance of the contract owner or operator in fulfilling their obligations as specified in paragraph (c) of this section.

(c) *Contract owner or operator responsibilities.* (1) The contract owner or operator shall assure that each contract employee is trained in the work practices necessary to safely perform his/her job.

(2) The contract owner or operator shall assure that each contract employee is instructed in the known potential fire, explosion, or toxic release hazards related to his/her job and the process, and the applicable provisions of the emergency action plan.

(3) The contract owner or operator shall document that each contract employee has received and understood the training required by this section. The contract owner or operator shall prepare a record which contains the identity of the contract employee, the date of training, and the means used to verify that the employee understood the training.

(4) The contract owner or operator shall assure that each contract employee follows the safety rules of the stationary source including the safe work practices required by § 68.69(d).

(5) The contract owner or operator shall advise the owner or operator of

any unique hazards presented by the contract owner or operator's work, or of any hazards found by the contract owner or operator's work.

Subpart E—Emergency Response

SOURCE: 61 FR 31725, June 20, 1996, unless otherwise noted.

§ 68.90 Applicability.

(a) Except as provided in paragraph (b) of this section, the owner or operator of a stationary source with Program 2 and Program 3 processes shall comply with the requirements of § 68.95.

(b) The owner or operator of stationary source whose employees will not respond to accidental releases of regulated substances need not comply with § 68.95 of this part provided that they meet the following:

(1) For stationary sources with any regulated toxic substance held in a process above the threshold quantity, the stationary source is included in the community emergency response plan developed under 42 U.S.C. 11003;

(2) For stationary sources with only regulated flammable substances held in a process above the threshold quantity, the owner or operator has coordinated response actions with the local fire department; and

(3) Appropriate mechanisms are in place to notify emergency responders when there is a need for a response.

§ 68.95 Emergency response program.

(a) The owner or operator shall develop and implement an emergency response program for the purpose of protecting public health and the environment. Such program shall include the following elements:

(1) An emergency response plan, which shall be maintained at the stationary source and contain at least the following elements:

(i) Procedures for informing the public and local emergency response agencies about accidental releases;

(ii) Documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures; and

(iii) Procedures and measures for emergency response after an accidental release of a regulated substance;

(2) Procedures for the use of emergency response equipment and for its inspection, testing, and maintenance;

(3) Training for all employees in relevant procedures; and

(4) Procedures to review and update, as appropriate, the emergency response plan to reflect changes at the stationary source and ensure that employees are informed of changes.

(b) A written plan that complies with other Federal contingency plan regulations or is consistent with the approach in the National Response Team's Integrated Contingency Plan Guidance ("One Plan") and that, among other matters, includes the elements provided in paragraph (a) of this section, shall satisfy the requirements of this section if the owner or operator also complies with paragraph (c) of this section.

(c) The emergency response plan developed under paragraph (a)(1) of this section shall be coordinated with the community emergency response plan developed under 42 U.S.C. 11003. Upon request of the local emergency planning committee or emergency response officials, the owner or operator shall promptly provide to the local emergency response officials information necessary for developing and implementing the community emergency response plan.

Subpart F—Regulated Substances for Accidental Release Prevention

SOURCE: 59 FR 4493, Jan. 31, 1994, unless otherwise noted. Redesignated at 61 FR 31717, June 20, 1996.

§ 68.100 Purpose.

This subpart designates substances to be listed under section 112(r)(3), (4), and (5) of the Clean Air Act, as amended, identifies their threshold quantities, and establishes the requirements for petitioning to add or delete substances from the list.

§ 68.115 Threshold determination.

(a) A threshold quantity of a regulated substance listed in § 68.130 is

present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold.

(b) For the purposes of determining whether more than a threshold quantity of a regulated substance is present at the stationary source, the following exemptions apply:

(1) *Concentrations of a regulated toxic substance in a mixture.* If a regulated substance is present in a mixture and the concentration of the substance is below one percent by weight of the mixture, the amount of the substance in the mixture need not be considered when determining whether more than a threshold quantity is present at the stationary source. Except for oleum, toluene 2,4-diisocyanate, toluene 2,6-diisocyanate, and toluene diisocyanate (unspecified isomer), if the concentration of the regulated substance in the mixture is one percent or greater by weight, but the owner or operator can demonstrate that the partial pressure of the regulated substance in the mixture (solution) under handling or storage conditions in any portion of the process is less than 10 millimeters of mercury (mm Hg), the amount of the substance in the mixture in that portion of the process need not be considered when determining whether more than a threshold quantity is present at the stationary source. The owner or operator shall document this partial pressure measurement or estimate.

(2) *Concentrations of a regulated flammable substance in a mixture.* (i) *General provision.* If a regulated substance is present in a mixture and the concentration of the substance is below one percent by weight of the mixture, the mixture need not be considered when determining whether more than a threshold quantity of the regulated substance is present at the stationary source. Except as provided in paragraph (b)(2) (ii) and (iii) of this section, if the concentration of the substance is one percent or greater by weight of the mixture, then, for purposes of determining whether a threshold quantity is present at the stationary source, the entire weight of the mixture shall be treated as the regulated substance unless the owner or operator can demonstrate that the mixture itself does

not have a National Fire Protection Association flammability hazard rating of 4. The demonstration shall be in accordance with the definition of flammability hazard rating 4 in the NFPA 704, Standard System for the Identification of the Hazards of Materials for Emergency Response, National Fire Protection Association, Quincy, MA, 1996. Available from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-9101. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the Environmental Protection Agency Air Docket (6102), Attn: Docket No. A-96-08, Waterside Mall, 401 M. St. SW., Washington DC; or at the Office of Federal Register at 800 North Capitol St., NW, Suite 700, Washington, DC. Boiling point and flash point shall be defined and determined in accordance with NFPA 30, Flammable and Combustible Liquids Code, National Fire Protection Association, Quincy, MA, 1996. Available from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-9101. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the Environmental Protection Agency Air Docket (6102), Attn: Docket No. A-96-08, Waterside Mall, 401 M. St. SW., Washington DC; or at the Office of Federal Register at 800 North Capitol St., NW., Suite 700, Washington, DC. The owner or operator shall document the National Fire Protection Association flammability hazard rating.

(ii) *Gasoline.* Regulated substances in gasoline, when in distribution or related storage for use as fuel for internal combustion engines, need not be considered when determining whether more than a threshold quantity is present at a stationary source.

(iii) *Naturally occurring hydrocarbon mixtures.* Prior to entry into a natural gas processing plant or a petroleum refining process unit, regulated substances in naturally occurring hydrocarbon mixtures need not be considered when determining whether more than a

threshold quantity is present at a stationary source. Naturally occurring hydrocarbon mixtures include any combination of the following: condensate, crude oil, field gas, and produced water, each as defined in §68.3 of this part.

(3) *Articles.* Regulated substances contained in articles need not be considered when determining whether more than a threshold quantity is present at the stationary source.

(4) *Uses.* Regulated substances, when in use for the following purposes, need not be included in determining whether more than a threshold quantity is present at the stationary source:

(i) Use as a structural component of the stationary source;

(ii) Use of products for routine janitorial maintenance;

(iii) Use by employees of foods, drugs, cosmetics, or other personal items containing the regulated substance; and

(iv) Use of regulated substances present in process water or non-contact cooling water as drawn from the environment or municipal sources, or use of regulated substances present in air used either as compressed air or as part of combustion.

(5) *Activities in laboratories.* If a regulated substance is manufactured, processed, or used in a laboratory at a stationary source under the supervision of a technically qualified individual as defined in §720.3(ee) of this chapter, the quantity of the substance need not be considered in determining whether a threshold quantity is present. This exemption does not apply to:

(i) Specialty chemical production;

(ii) Manufacture, processing, or use of substances in pilot plant scale operations; and

(iii) Activities conducted outside the laboratory.

[59 FR 4493, Jan. 31, 1994. Redesignated at 61 FR 31717, June 20, 1996, as amended at 63 FR 645, Jan. 6, 1998]

§68.120 Petition process.

(a) Any person may petition the Administrator to modify, by addition or deletion, the list of regulated substances identified in §68.130. Based on the information presented by the petitioner, the Administrator may grant or deny a petition.

(b) A substance may be added to the list if, in the case of an accidental release, it is known to cause or may be reasonably anticipated to cause death, injury, or serious adverse effects to human health or the environment.

(c) A substance may be deleted from the list if adequate data on the health and environmental effects of the substance are available to determine that the substance, in the case of an accidental release, is not known to cause and may not be reasonably anticipated to cause death, injury, or serious adverse effects to human health or the environment.

(d) No substance for which a national primary ambient air quality standard has been established shall be added to the list. No substance regulated under title VI of the Clean Air Act, as amended, shall be added to the list.

(e) The burden of proof is on the petitioner to demonstrate that the criteria for addition and deletion are met. A petition will be denied if this demonstration is not made.

(f) The Administrator will not accept additional petitions on the same substance following publication of a final notice of the decision to grant or deny a petition, unless new data becomes available that could significantly affect the basis for the decision.

(g) Petitions to modify the list of regulated substances must contain the following:

(1) Name and address of the petitioner and a brief description of the organization(s) that the petitioner represents, if applicable;

(2) Name, address, and telephone number of a contact person for the petition;

(3) Common chemical name(s), common synonym(s), Chemical Abstracts Service number, and chemical formula and structure;

(4) Action requested (add or delete a substance);

(5) Rationale supporting the petitioner's position; that is, how the substance meets the criteria for addition and deletion. A short summary of the rationale must be submitted along with a more detailed narrative; and

Environmental Protection Agency

§ 68.130

(6) Supporting data; that is, the petition must include sufficient information to scientifically support the request to modify the list. Such information shall include:

(i) A list of all support documents;
(ii) Documentation of literature searches conducted, including, but not limited to, identification of the database(s) searched, the search strategy, dates covered, and printed results;

(iii) Effects data (animal, human, and environmental test data) indicating the potential for death, injury, or serious adverse human and environmental impacts from acute exposure following an accidental release; printed copies of the data sources, in English, should be provided; and

(iv) Exposure data or previous accident history data, indicating the potential for serious adverse human health or environmental effects from an accidental release. These data may include, but are not limited to, physical and chemical properties of the substance, such as vapor pressure; modeling results, including data and assumptions used and model documentation; and historical accident data, citing data sources.

(h) Within 18 months of receipt of a petition, the Administrator shall publish in the FEDERAL REGISTER a notice either denying the petition or granting the petition and proposing a listing.

§ 68.125 Exemptions.

Agricultural nutrients. Ammonia used as an agricultural nutrient, when held by farmers, is exempt from all provisions of this part.

§ 68.130 List of substances.

(a) Regulated toxic and flammable substances under section 112(r) of the Clean Air Act are the substances listed in Tables 1, 2, 3, and 4. Threshold quantities for listed toxic and flammable substances are specified in the tables.

(b) The basis for placing toxic and flammable substances on the list of regulated substances are explained in the notes to the list.

TABLE 1 TO § 68.130.—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION
[Alphabetical Order—77 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Acrolein [2-Propenal].	107-02-8	5,000	b
Acrylonitrile [2-Propenenitrile].	107-13-1	20,000	b
Acrylyl chloride [2-Propenoyl chloride].	814-68-6	5,000	b
Allyl alcohol [2-Propen-1-ol].	107-18-61	15,000	b
Allylamine [2-Propen-1-amine].	107-11-9	10,000	b
Ammonia (anhydrous).	7664-41-7	10,000	a, b
Ammonia (conc 20% or greater).	7664-41-7	20,000	a, b
Arsenous trichloride.	7784-34-1	15,000	b
Arsine	7784-42-1	1,000	b
Boron trichloride [Borane, trichloro-].	10294-34-5	5,000	b
Boron trifluoride [Borane, trifluoro-].	7637-07-2	5,000	b
Boron trifluoride compound with methyl ether (1:1) [Boron, trifluoro [oxybis [metane]], T-4-.	353-42-4	15,000	b
Bromine	7726-95-6	10,000	a, b
Carbon disulfide ..	75-15-0	20,000	b
Chlorine	7782-50-5	2,500	a, b
Chlorine dioxide [Chlorine oxide (ClO ₂)].	10049-04-4	1,000	c
Chloroform [Methane, trichloro-].	67-66-3	20,000	b
Chloromethyl ether [Methane, oxybis[chloro-].	542-88-1	1,000	b
Chloromethyl methyl ether [Methane, chloromethoxy-].	107-30-2	5,000	b
Crotonaldehyde [2-Butenal].	4170-30-3	20,000	b
Crotonaldehyde, (E)- [2-Butenal, (E)-].	123-73-9	20,000	b
Cyanogen chloride.	506-77-4	10,000	c
Cyclohexylamine [Cyclohexanamine].	108-91-8	15,000	b
Diborane	19287-45-7	2,500	b
Dimethyldichlorosilane [Silane, dichlorodimethyl-].	75-78-5	5,000	b
1,1-Dimethylhydrazine [Hydrazine, 1,1-dimethyl-].	57-14-7	15,000	b

§ 68.130

TABLE 1 TO § 68.130.—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION—Continued

[Alphabetical Order—77 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Epichlorohydrin [Oxirane, (chloromethyl)-].	106–89–8	20,000	b
Ethylenediamine [1,2-Ethanediamine].	107–15–3	20,000	b
Ethyleneimine [Aziridine].	151–56–4	10,000	b
Ethylene oxide [Oxirane].	75–21–8	10,000	a, b
Fluorine	7782–41–4	1,000	b
Formaldehyde (solution).	50–00–0	15,000	b
Furan	110–00–9	5,000	b
Hydrazine	302–01–2	15,000	b
Hydrochloric acid (conc 37% or greater).	7647–01–0	15,000	d
Hydrocyanic acid	74–90–8	2,500	a, b
Hydrogen chloride (anhydrous) [Hydrochloric acid].	7647–01–0	5,000	a
Hydrogen fluoride/ Hydrofluoric acid (conc 50% or greater) [Hydrofluoric acid].	7664–39–3	1,000	a, b
Hydrogen selenide.	7783–07–5	500	b
Hydrogen sulfide	7783–06–4	10,000	a, b
Iron, pentacarbonyl- [Iron carbonyl (Fe(CO) ₅), (TB-5-11)-].	13463–40–6	2,500	b
Isobutyronitrile [Propanenitrile, 2-methyl-].	78–82–0	20,000	b
Isopropyl chloroformate [Carbonochloridic acid, 1-methylethyl ester].	108–23–6	15,000	b
Methacrylonitrile [2-Propenenitrile, 2-methyl-].	126–98–7	10,000	b
Methyl chloride [Methane, chloro-].	74–87–3	10,000	a
Methyl chloroformate [Carbonochloridic acid, methylester].	79–22–1	5,000	b
Methyl hydrazine [Hydrazine, methyl-].	60–34–4	15,000	b
Methyl isocyanate [Methane, isocyanato-].	624–83–9	10,000	a, b

40 CFR Ch. I (7–1–98 Edition)

TABLE 1 TO § 68.130.—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION—Continued

[Alphabetical Order—77 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Methyl mercaptan [Methanethiol].	74–93–1	10,000	b
Methyl thiocyanate [Thiocyanic acid, methyl ester].	556–64–9	20,000	b
Methyltrichlorosilane [Silane, trichloromethyl-].	75–79–6	5,000	b
Nickel carbonyl	13463–39–3	1,000	b
Nitric acid (conc 80% or greater).	7697–37–2	15,000	b
Nitric oxide [Nitrogen oxide (NO)].	10102–43–9	10,000	b
Oleum (Fuming Sulfuric acid) [Sulfuric acid, mixture with sulfur trioxide] ¹ .	8014–95–7	10,000	e
Peracetic acid [Ethaneperoxoic acid].	79–21–0	10,000	b
Perchloromethylmercaptan [Methanesulfenyl chloride, trichloro-].	594–42–3	10,000	b
Phosgene [Carbonic dichloride].	75–44–5	500	a, b
Phosphine	7803–51–2	5,000	b
Phosphorus oxychloride [Phosphoryl chloride].	10025–87–3	5,000	b
Phosphorus trichloride [Phosphorous trichloride].	7719–12–2	15,000	b
Piperidine	110–89–4	15,000	b
Propionitrile [Propanenitrile].	107–12–0	10,000	b
Propyl chloroformate [Carbonochloridic acid, propylester].	109–61–5	15,000	b
Propyleneimine [Aziridine, 2-methyl-].	75–55–8	10,000	b
Propylene oxide [Oxirane, methyl-].	75–56–9	10,000	b
Sulfur dioxide (anhydrous).	7446–09–5	5,000	a, b
Sulfur tetrafluoride [Sulfur fluoride (SF ₄), (T-4)-].	7783–60–0	2,500	b
Sulfur trioxide	7446–11–9	10,000	a, b
Tetramethyllead [Plumbane, tetramethyl-].	75–74–1	10,000	b
Tetranitromethane [Methane, tetranitro-].	509–14–8	10,000	b

Environmental Protection Agency

§ 68.130

TABLE 1 TO § 68.130.—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION—Continued

[Alphabetical Order—77 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Titanium tetrachloride [Titanium chloride (TiCl ₄) (T-4)-].	7550-45-0	2,500	b
Toluene 2,4-diisocyanate [Benzene, 2,4-diisocyanato-1-methyl-] ¹ .	584-84-9	10,000	a
Toluene 2,6-diisocyanate [Benzene, 1,3-diisocyanato-2-methyl-] ¹ .	91-08-7	10,000	a
Toluene diisocyanate (unspecified isomer) [Benzene, 1,3-diisocyanatomethyl-] ¹ .	26471-62-5	10,000	a

TABLE 1 TO § 68.130.—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION—Continued

[Alphabetical Order—77 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Trimethylchlorosilane [Silane, chlorotrimethyl-].	75-77-4	10,000	b
Vinyl acetate monomer [Acetic acid ethenyl ester].	108-05-4	15,000	b

¹ The mixture exemption in § 68.115(b)(1) does not apply to the substance.

NOTE: Basis for Listing:

a Mandated for listing by Congress.

b On EHS list, vapor pressure 10 mmHg or greater.

c Toxic gas.

d Toxicity of hydrogen chloride, potential to release hydrogen chloride, and history of accidents.

e Toxicity of sulfur trioxide and sulfuric acid, potential to release sulfur trioxide, and history of accidents.

TABLE 2 TO § 68.130.—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION

[CAS Number Order—77 Substances]

CAS No.	Chemical name	Threshold quantity (lbs)	Basis for listing
50-00-0	Formaldehyde (solution)	15,000	b
57-14-7	1,1-Dimethylhydrazine [Hydrazine, 1,1-dimethyl-]	15,000	b
60-34-4	Methyl hydrazine [Hydrazine, methyl-]	15,000	b
67-66-3	Chloroform [Methane, trichloro-]	20,000	b
74-87-3	Methyl chloride [Methane, chloro-]	10,000	a
74-90-8	Hydrocyanic acid	2,500	a, b
74-93-1	Methyl mercaptan [Methanethiol]	10,000	b
75-15-0	Carbon disulfide	20,000	b
75-21-8	Ethylene oxide [Oxirane]	10,000	a, b
75-44-5	Phosgene [Carbonic dichloride]	500	a, b
75-55-8	Propyleneimine [Aziridine, 2-methyl-]	10,000	b
75-56-9	Propylene oxide [Oxirane, methyl-]	10,000	b
75-74-1	Tetramethyllead [Plumbane, tetramethyl-]	10,000	b
75-77-4	Trimethylchlorosilane [Silane, chlorotrimethyl-]	10,000	b
75-78-5	Dimethyldichlorosilane [Silane, dichlorodimethyl-]	5,000	b
75-79-6	Methyltrichlorosilane [Silane, trichloromethyl-]	5,000	b
78-82-0	Isobutyronitrile [Propanenitrile, 2-methyl-]	20,000	b
79-21-0	Peracetic acid [Ethaneperoxy acid]	10,000	b
79-22-1	Methyl chloroformate [Carbonochloridic acid, methylester]	5,000	b
91-08-7	Toluene 2,6-diisocyanate [Benzene, 1,3-diisocyanato-2-methyl-] ¹	10,000	a
106-89-8	Epichlorohydrin [Oxirane, (chloromethyl)-]	20,000	b
107-02-8	Acrolein [2-Propenal]	5,000	b
107-11-9	Allylamine [2-Propen-1-amine]	10,000	b
107-12-0	Propionitrile [Propanenitrile]	10,000	b
107-13-1	Acrylonitrile [2-Propenenitrile]	20,000	b
107-15-3	Ethylenediamine [1,2-Ethanediamine]	20,000	b
107-18-6	Allyl alcohol [2-Propen-1-ol]	15,000	b
107-30-2	Chloromethyl methyl ether [Methane, chloromethoxy-]	5,000	b
108-05-4	Vinyl acetate monomer [Acetic acid ethenyl ester]	15,000	b
108-23-6	Isopropyl chloroformate [Carbonochloridic acid, 1-methylethyl ester]	15,000	b
108-91-8	Cyclohexylamine [Cyclohexanamine]	15,000	b
109-61-5	Propyl chloroformate [Carbonochloridic acid, propylester]	15,000	b
110-00-9	Furan	5,000	b
110-89-4	Piperidine	15,000	b
123-73-9	Crotonaldehyde, (E)- [2-Butenal, (E)-]	20,000	b

TABLE 2 TO § 68.130.—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION—Continued
[CAS Number Order—77 Substances]

CAS No.	Chemical name	Threshold quantity (lbs)	Basis for listing
126–98–7	Methacrylonitrile [2-Propenenitrile, 2-methyl-]	10,000	b
151–56–4	Ethyleneimine [Aziridine]	10,000	b
302–01–2	Hydrazine	15,000	b
353–42–4	Boron trifluoride compound with methyl ether (1:1) [Boron, trifluoro[oxybis(methane)]-, T-4-]	15,000	b
506–77–4	Cyanogen chloride	10,000	c
509–14–8	Tetranitromethane [Methane, tetranitro-]	10,000	b
542–88–1	Chloromethyl ether [Methane, oxybis(chloro-)]	1,000	b
556–64–9	Methyl thiocyanate [Thiocyanic acid, methyl ester]	20,000	b
584–84–9	Toluene 2,4-diisocyanate [Benzene, 2,4-diisocyanato-1-methyl-] ¹	10,000	a
594–42–3	Perchloromethylmercaptan [Methanesulfonyl chloride, trichloro-]	10,000	b
624–83–9	Methyl isocyanate [Methane, isocyanato-]	10,000	a, b
814–68–6	Acrylyl chloride [2-Propenoyl chloride]	5,000	b
4170–30–3	Crotonaldehyde [2-Butenal]	20,000	b
7446–09–5	Sulfur dioxide (anhydrous)	5,000	a, b
7446–11–9	Sulfur trioxide	10,000	a, b
7550–45–0	Titanium tetrachloride [Titanium chloride (TiCl ₄) (T-4)-]	2,500	b
7637–07–2	Boron trifluoride [Borane, trifluoro-]	5,000	b
7647–01–0	Hydrochloric acid (conc 37% or greater)	15,000	d
7647–01–0	Hydrogen chloride (anhydrous) [Hydrochloric acid]	5,000	a
7664–39–3	Hydrogen fluoride/Hydrofluoric acid (conc 50% or greater) [Hydrofluoric acid]	1,000	a, b
7664–41–7	Ammonia (anhydrous)	10,000	a, b
7664–41–7	Ammonia (conc 20% or greater)	20,000	a, b
7697–37–2	Nitric acid (conc 80% or greater)	15,000	b
7719–12–2	Phosphorus trichloride [Phosphorous trichloride]	15,000	b
7726–95–6	Bromine	10,000	a, b
7782–41–4	Fluorine	1,000	b
7782–50–5	Chlorine	2,500	a, b
7783–06–4	Hydrogen sulfide	10,000	a, b
7783–07–5	Hydrogen selenide	500	b
7783–60–0	Sulfur tetrafluoride [Sulfur fluoride (SF ₄), (T-4)-]	2,500	b
7784–34–1	Arsenous trichloride	15,000	b
7784–42–1	Arsine	1,000	b
7803–51–2	Phosphine	5,000	b
8014–95–7	Oleum (Fuming Sulfuric acid) [Sulfuric acid, mixture with sulfur trioxide] ¹	10,000	e
10025–87–3	Phosphorus oxychloride [Phosphoryl chloride]	5,000	b
10049–04–4	Chlorine dioxide [Chlorine oxide (ClO ₂)]	1,000	c
10102–43–9	Nitric oxide [Nitrogen oxide (NO)]	10,000	b
10294–34–5	Boron trichloride [Borane, trichloro-]	5,000	b
13463–39–3	Nickel carbonyl	1,000	b
13463–40–6	Iron, pentacarbonyl- [Iron carbonyl (Fe(CO) ₅), (TB-5-11)-]	2,500	b
19287–45–7	Diborane	2,500	b
26471–62–5	Toluene diisocyanate (unspecified isomer) [Benzene, 1,3-diisocyanatomethyl-1] ¹ .	10,000	a

¹ The mixture exemption in § 68.115(b)(1) does not apply to the substance.

NOTE: Basis for Listing:

a Mandated for listing by Congress.

b On EHS list, vapor pressure 10 mmHg or greater.

c Toxic gas.

d Toxicity of hydrogen chloride, potential to release hydrogen chloride, and history of accidents.

e Toxicity of sulfur trioxide and sulfuric acid, potential to release sulfur trioxide, and history of accidents.

TABLE 3 TO § 68.130.—LIST OF REGULATED FLAMMABLE SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION
[Alphabetical Order—63 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Acetaldehyde	75–07–0	10,000	g
Acetylene [Ethyne]	74–86–2	10,000	f
Bromotrifluoroethylene [Ethene, bromotrifluoro-]	598–73–2	10,000	f
1,3-Butadiene	106–99–0	10,000	f
Butane	106–97–8	10,000	f
1-Butene	106–98–9	10,000	f
2-Butene	107–01–7	10,000	f
Butene	25167–67–3	10,000	f

Environmental Protection Agency

§ 68.130

TABLE 3 TO § 68.130.—LIST OF REGULATED FLAMMABLE SUBSTANCES AND THRESHOLD QUANTITIES
FOR ACCIDENTAL RELEASE PREVENTION—Continued
[Alphabetical Order—63 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
2-Butene-cis	590-18-1	10,000	f
2-Butene-trans [2-Butene, (E)]	624-64-6	10,000	f
Carbon oxysulfide [Carbon oxide sulfide (COS)]	463-58-1	10,000	f
Chlorine monoxide [Chlorine oxide]	7791-21-1	10,000	f
2-Chloropropylene [1-Propene, 2-chloro-]	557-98-2	10,000	g
1-Chloropropylene [1-Propene, 1-chloro-]	590-21-6	10,000	g
Cyanogen [Ethanedinitrile]	460-19-5	10,000	f
Cyclopropane	75-19-4	10,000	f
Dichlorosilane [Silane, dichloro-]	4109-96-0	10,000	f
Difluoroethane [Ethane, 1,1-difluoro-]	75-37-6	10,000	f
Dimethylamine [Methanamine, N-methyl-]	124-40-3	10,000	f
2,2-Dimethylpropane [Propane, 2,2-dimethyl-]	463-82-1	10,000	f
Ethane	74-84-0	10,000	f
Ethyl acetylene [1-Butyne]	107-00-6	10,000	f
Ethylamine [Ethanamine]	75-04-7	10,000	f
Ethyl chloride [Ethane, chloro-]	75-00-3	10,000	f
Ethylene [Ethene]	74-85-1	10,000	f
Ethyl ether [Ethane, 1,1'-oxybis-]	60-29-7	10,000	g
Ethyl mercaptan [Ethanethiol]	75-08-1	10,000	g
Ethyl nitrite [Nitrous acid, ethyl ester]	109-95-5	10,000	f
Hydrogen	1333-74-0	10,000	f
Isobutane [Propane, 2-methyl]	75-28-5	10,000	f
Isopentane [Butane, 2-methyl-]	78-78-4	10,000	g
Isoprene [1,3-Butadiene, 2-methyl-]	78-79-5	10,000	g
Isopropylamine [2-Propanamine]	75-31-0	10,000	g
Isopropyl chloride [Propane, 2-chloro-]	75-29-6	10,000	g
Methane	74-82-8	10,000	f
Methylamine [Methanamine]	74-89-5	10,000	f
3-Methyl-1-butene	563-45-1	10,000	f
2-Methyl-1-butene	563-46-2	10,000	g
Methyl ether [Methane, oxybis-]	115-10-6	10,000	f
Methyl formate [Formic acid, methyl ester]	107-31-3	10,000	g
2-Methylpropene [1-Propene, 2-methyl-]	115-11-7	10,000	f
1,3-Pentadiene	504-60-9	10,000	f
Pentane	109-66-0	10,000	g
1-Pentene	109-67-1	10,000	g
2-Pentene, (E)-	646-04-8	10,000	g
2-Pentene, (Z)-	627-20-3	10,000	g
Propadiene [1,2-Propadiene]	463-49-0	10,000	f
Propane	74-98-6	10,000	f
Propylene [1-Propene]	115-07-1	10,000	f
Propyne [1-Propyne]	74-99-7	10,000	f
Silane	7803-62-5	10,000	f
Tetrafluoroethylene [Ethene, tetrafluoro-]	116-14-3	10,000	f
Tetramethylsilane [Silane, tetramethyl-]	75-76-3	10,000	g
Trichlorosilane [Silane, trichloro-]	10025-78-2	10,000	g
Trifluorochloroethylene [Ethene, chlorotrifluoro-]	79-38-9	10,000	f
Trimethylamine [Methanamine, N,N-dimethyl-]	75-50-3	10,000	f
Vinyl acetylene [1-Buten-3-yne]	689-97-4	10,000	f
Vinyl chloride [Ethene, chloro-]	75-01-4	10,000	a, f
Vinyl ethyl ether [Ethene, ethoxy-]	109-92-2	10,000	g
Vinyl fluoride [Ethene, fluoro-]	75-02-5	10,000	f
Vinylidene chloride [Ethene, 1,1-dichloro-]	75-35-4	10,000	g
Vinylidene fluoride [Ethene, 1,1-difluoro-]	75-38-7	10,000	f
Vinyl methyl ether [Ethene, methoxy-]	107-25-5	10,000	f

NOTE: Basis for Listing:
a Mandated for listing by Congress.
f Flammable gas.
g Volatile flammable liquid.

§ 68.130

40 CFR Ch. I (7–1–98 Edition)

TABLE 4 TO § 68.130.—LIST OF REGULATED FLAMMABLE SUBSTANCES AND THRESHOLD QUANTITIES
FOR ACCIDENTAL RELEASE PREVENTION
[CAS Number Order—63 Substances]

CAS No.	Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
60–29–7	Ethyl ether [Ethane, 1,1'-oxybis-]	60–29–7	10,000	g
74–82–8	Methane	74–82–8	10,000	f
74–84–0	Ethane	74–84–0	10,000	f
74–85–1	Ethylene [Ethene]	74–85–1	10,000	f
74–86–2	Acetylene [Ethyne]	74–86–2	10,000	f
74–89–5	Methylamine [Methanamine]	74–89–5	10,000	f
74–98–6	Propane	74–98–6	10,000	f
74–99–7	Propyne [1-Propyne]	74–99–7	10,000	f
75–00–3	Ethyl chloride [Ethane, chloro-]	75–00–3	10,000	f
75–01–4	Vinyl chloride [Ethene, chloro-]	75–01–4	10,000	a, f
75–02–5	Vinyl fluoride [Ethene, fluoro-]	75–02–5	10,000	f
75–04–7	Ethylamine [Ethanamine]	75–04–7	10,000	f
75–07–0	Acetaldehyde	75–07–0	10,000	g
75–08–1	Ethyl mercaptan [Ethanethiol]	75–08–1	10,000	g
75–19–4	Cyclopropane	75–19–4	10,000	f
75–28–5	Isobutane [Propane, 2-methyl]	75–28–5	10,000	f
75–29–6	Isopropyl chloride [Propane, 2-chloro-]	75–29–6	10,000	g
75–31–0	Isopropylamine [2-Propanamine]	75–31–0	10,000	g
75–35–4	Vinylidene chloride [Ethene, 1,1-dichloro-]	75–35–4	10,000	g
75–37–6	Difluoroethane [Ethane, 1,1-difluoro-]	75–37–6	10,000	f
75–38–7	Vinylidene fluoride [Ethene, 1,1-difluoro-]	75–38–7	10,000	f
75–50–3	Trimethylamine [Methanamine, N, N-dimethyl-]	75–50–3	10,000	f
75–76–3	Tetramethylsilane [Silane, tetramethyl-]	75–76–3	10,000	g
78–78–4	Isopentane [Butane, 2-methyl-]	78–78–4	10,000	g
78–79–5	Isoprene [1,3-Butadiene, 2-methyl-]	78–79–5	10,000	g
79–38–9	Trifluorochloroethylene [Ethene, chlorotrifluoro-]	79–38–9	10,000	f
106–97–8	Butane	106–97–8	10,000	f
106–98–9	1-Butene	106–98–9	10,000	f
196–99–0	1,3-Butadiene	106–99–0	10,000	f
107–00–6	Ethyl acetylene [1-Butyne]	107–00–6	10,000	f
107–01–7	2-Butene	107–01–7	10,000	f
107–25–5	Vinyl methyl ether [Ethene, methoxy-]	107–25–5	10,000	f
107–31–3	Methyl formate [Formic acid, methyl ester]	107–31–3	10,000	g
109–66–0	Pentane	109–66–0	10,000	g
109–67–1	1-Pentene	109–67–1	10,000	g
109–92–2	Vinyl ethyl ether [Ethene, ethoxy-]	109–92–2	10,000	g
109–95–5	Ethyl nitrite [Nitrous acid, ethyl ester]	109–95–5	10,000	f
115–07–1	Propylene [1-Propene]	115–07–1	10,000	f
115–10–6	Methyl ether [Methane, oxybis-]	115–10–6	10,000	f
115–11–7	2-Methylpropene [1-Propene, 2-methyl-]	115–11–7	10,000	f
116–14–3	Tetrafluoroethylene [Ethene, tetrafluoro-]	116–14–3	10,000	f
124–40–3	Dimethylamine [Methanamine, N-methyl-]	124–40–3	10,000	f
460–19–5	Cyanogen [Ethanedinitrile]	460–19–5	10,000	f
463–49–0	Propadiene [1,2-Propadiene]	463–49–0	10,000	f
463–58–1	Carbon oxysulfide [Carbon oxide sulfide (COS)]	463–58–1	10,000	f
463–82–1	2,2-Dimethylpropane [Propane, 2,2-dimethyl-]	463–82–1	10,000	f
504–60–9	1,3-Pentadiene	504–60–9	10,000	f
557–98–2	2-Chloropropylene [1-Propene, 2-chloro-]	557–98–2	10,000	g
563–45–1	3-Methyl-1-butene	563–45–1	10,000	f
563–46–2	2-Methyl-1-butene	563–46–2	10,000	g
590–18–1	2-Butene-cis	590–18–1	10,000	f
590–21–6	1-Chloropropylene [1-Propene, 1-chloro-]	590–21–6	10,000	g
598–73–2	Bromotrifluoroethylene [Ethene, bromotrifluoro-]	598–73–2	10,000	f
624–64–6	2-Butene-trans [2-Butene, (E)]	624–64–6	10,000	f
627–20–3	2-Pentene, (Z)-	627–20–3	10,000	g
646–04–8	2-Pentene, (E)-	646–04–8	10,000	g
689–97–4	Vinyl acetylene [1-Buten-3-yne]	689–97–4	10,000	f
1333–74–0	Hydrogen	1333–74–0	10,000	f
4109–96–0	Dichlorosilane [Silane, dichloro-]	4109–96–0	10,000	f
7791–21–1	Chlorine monoxide [Chlorine oxide]	7791–21–1	10,000	f
7803–62–5	Silane	7803–62–5	10,000	f
10025–78–2	Trichlorosilane [Silane, trichloro-]	10025–78–2	10,000	g
25167–67–3	Butene	25167–67–3	10,000	f

Note: Basis for Listing: a Mandated for listing by Congress. f Flammable gas. g Volatile flammable liquid.

[59 FR 4493, Jan. 31, 1994. Redesignated at 61 FR 31717, June 20, 1996, as amended at 62 FR 45132, Aug. 25, 1997; 63 FR 645, Jan. 6, 1998]

Subpart G—Risk Management Plan

SOURCE: 61 FR 31726, June 20, 1996, unless otherwise noted.

§ 68.150 Submission.

(a) The owner or operator shall submit a single RMP that includes the information required by §§ 68.155 through 68.185 for all covered processes. The RMP shall be submitted in a method and format to a central point as specified by EPA prior to June 21, 1999.

(b) The owner or operator shall submit the first RMP no later than the latest of the following dates:

- (1) June 21, 1999;
- (2) Three years after the date on which a regulated substance is first listed under § 68.130; or
- (3) The date on which a regulated substance is first present above a threshold quantity in a process.

(c) Subsequent submissions of RMPs shall be in accordance with § 68.190.

(d) Notwithstanding the provisions of §§ 68.155 to 68.190, the RMP shall exclude classified information. Subject to appropriate procedures to protect such information from public disclosure, classified data or information excluded from the RMP may be made available in a classified annex to the RMP for review by Federal and state representatives who have received the appropriate security clearances.

§ 68.155 Executive summary.

The owner or operator shall provide in the RMP an executive summary that includes a brief description of the following elements:

- (a) The accidental release prevention and emergency response policies at the stationary source;
- (b) The stationary source and regulated substances handled;
- (c) The worst-case release scenario(s) and the alternative release scenario(s), including administrative controls and mitigation measures to limit the distances for each reported scenario;
- (d) The general accidental release prevention program and chemical-specific prevention steps;
- (e) The five-year accident history;

- (f) The emergency response program; and
- (g) Planned changes to improve safety.

§ 68.160 Registration.

(a) The owner or operator shall complete a single registration form and include it in the RMP. The form shall cover all regulated substances handled in covered processes.

(b) The registration shall include the following data:

(1) Stationary source name, street, city, county, state, zip code, latitude, and longitude;

(2) The stationary source Dun and Bradstreet number;

(3) Name and Dun and Bradstreet number of the corporate parent company;

(4) The name, telephone number, and mailing address of the owner or operator;

(5) The name and title of the person or position with overall responsibility for RMP elements and implementation;

(6) The name, title, telephone number, and 24-hour telephone number of the emergency contact;

(7) For each covered process, the name and CAS number of each regulated substance held above the threshold quantity in the process, the maximum quantity of each regulated substance or mixture in the process (in pounds) to two significant digits, the SIC code, and the Program level of the process;

(8) The stationary source EPA identifier;

(9) The number of full-time employees at the stationary source;

(10) Whether the stationary source is subject to 29 CFR 1910.119;

(11) Whether the stationary source is subject to 40 CFR part 355;

(12) Whether the stationary source has a CAA Title V operating permit; and

(13) The date of the last safety inspection of the stationary source by a Federal, state, or local government agency and the identity of the inspecting entity.

§ 68.165 Offsite consequence analysis.

(a) The owner or operator shall submit in the RMP information:

(1) One worst-case release scenario for each Program 1 process; and

(2) For Program 2 and 3 processes, one worst-case release scenario to represent all regulated toxic substances held above the threshold quantity and one worst-case release scenario to represent all regulated flammable substances held above the threshold quantity. If additional worst-case scenarios for toxics or flammables are required by § 68.25(a)(2)(iii), the owner or operator shall submit the same information on the additional scenario(s). The owner or operator of Program 2 and 3 processes shall also submit information on one alternative release scenario for each regulated toxic substance held above the threshold quantity and one alternative release scenario to represent all regulated flammable substances held above the threshold quantity.

(b) The owner or operator shall submit the following data:

- (1) Chemical name;
- (2) Physical state (toxics only);
- (3) Basis of results (give model name if used);
- (4) Scenario (explosion, fire, toxic gas release, or liquid spill and vaporization);
- (5) Quantity released in pounds;
- (6) Release rate;
- (7) Release duration;
- (8) Wind speed and atmospheric stability class (toxics only);
- (9) Topography (toxics only);
- (10) Distance to endpoint;
- (11) Public and environmental receptors within the distance;
- (12) Passive mitigation considered; and
- (13) Active mitigation considered (alternative releases only);

§ 68.168 Five-year accident history.

The owner or operator shall submit in the RMP the information provided in § 68.42(b) on each accident covered by § 68.42(a).

§ 68.170 Prevention program/Program 2.

(a) For each Program 2 process, the owner or operator shall provide in the RMP the information indicated in paragraphs (b) through (k) of this sec-

tion. If the same information applies to more than one covered process, the owner or operator may provide the information only once, but shall indicate to which processes the information applies.

(b) The SIC code for the process.

(c) The name(s) of the chemical(s) covered.

(d) The date of the most recent review or revision of the safety information and a list of Federal or state regulations or industry-specific design codes and standards used to demonstrate compliance with the safety information requirement.

(e) The date of completion of the most recent hazard review or update.

(1) The expected date of completion of any changes resulting from the hazard review;

(2) Major hazards identified;

(3) Process controls in use;

(4) Mitigation systems in use;

(5) Monitoring and detection systems in use; and

(6) Changes since the last hazard review.

(f) The date of the most recent review or revision of operating procedures.

(g) The date of the most recent review or revision of training programs;

(1) The type of training provided—classroom, classroom plus on the job, on the job; and

(2) The type of competency testing used.

(h) The date of the most recent review or revision of maintenance procedures and the date of the most recent equipment inspection or test and the equipment inspected or tested.

(i) The date of the most recent compliance audit and the expected date of completion of any changes resulting from the compliance audit.

(j) The date of the most recent incident investigation and the expected date of completion of any changes resulting from the investigation.

(k) The date of the most recent change that triggered a review or revision of safety information, the hazard review, operating or maintenance procedures, or training.

§ 68.175 Prevention program/Program 3.

(a) For each Program 3 process, the owner or operator shall provide the information indicated in paragraphs (b) through (p) of this section. If the same information applies to more than one covered process, the owner or operator may provide the information only once, but shall indicate to which processes the information applies.

(b) The SIC code for the process.

(c) The name(s) of the substance(s) covered.

(d) The date on which the safety information was last reviewed or revised.

(e) The date of completion of the most recent PHA or update and the technique used.

(1) The expected date of completion of any changes resulting from the PHA;

(2) Major hazards identified;

(3) Process controls in use;

(4) Mitigation systems in use;

(5) Monitoring and detection systems in use; and

(6) Changes since the last PHA.

(f) The date of the most recent review or revision of operating procedures.

(g) The date of the most recent review or revision of training programs;

(1) The type of training provided—classroom, classroom plus on the job, on the job; and

(2) The type of competency testing used.

(h) The date of the most recent review or revision of maintenance procedures and the date of the most recent equipment inspection or test and the equipment inspected or tested.

(i) The date of the most recent change that triggered management of change procedures and the date of the most recent review or revision of management of change procedures.

(j) The date of the most recent pre-startup review.

(k) The date of the most recent compliance audit and the expected date of completion of any changes resulting from the compliance audit;

(l) The date of the most recent incident investigation and the expected date of completion of any changes resulting from the investigation;

(m) The date of the most recent review or revision of employee participation plans;

(n) The date of the most recent review or revision of hot work permit procedures;

(o) The date of the most recent review or revision of contractor safety procedures; and

(p) The date of the most recent evaluation of contractor safety performance.

§ 68.180 Emergency response program.

(a) The owner or operator shall provide in the RMP the following information:

(1) Do you have a written emergency response plan?

(2) Does the plan include specific actions to be taken in response to an accidental releases of a regulated substance?

(3) Does the plan include procedures for informing the public and local agencies responsible for responding to accidental releases?

(4) Does the plan include information on emergency health care?

(5) The date of the most recent review or update of the emergency response plan;

(6) The date of the most recent emergency response training for employees.

(b) The owner or operator shall provide the name and telephone number of the local agency with which the plan is coordinated.

(c) The owner or operator shall list other Federal or state emergency plan requirements to which the stationary source is subject.

§ 68.185 Certification.

(a) For Program 1 processes, the owner or operator shall submit in the RMP the certification statement provided in § 68.12(b)(4).

(b) For all other covered processes, the owner or operator shall submit in the RMP a single certification that, to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the information submitted is true, accurate, and complete.

§ 68.190 Updates.

(a) The owner or operator shall review and update the RMP as specified in paragraph (b) of this section and submit it in a method and format to a

central point specified by EPA prior to June 21, 1999.

(b) The owner or operator of a stationary source shall revise and update the RMP submitted under §68.150 as follows:

(1) Within five years of its initial submission or most recent update required by paragraphs (b)(2) through (b)(7) of this section, whichever is later.

(2) No later than three years after a newly regulated substance is first listed by EPA;

(3) No later than the date on which a new regulated substance is first present in an already covered process above a threshold quantity;

(4) No later than the date on which a regulated substance is first present above a threshold quantity in a new process;

(5) Within six months of a change that requires a revised PHA or hazard review;

(6) Within six months of a change that requires a revised offsite consequence analysis as provided in §68.36; and

(7) Within six months of a change that alters the Program level that applied to any covered process.

(c) If a stationary source is no longer subject to this part, the owner or operator shall submit a revised registration to EPA within six months indicating that the stationary source is no longer covered.

Subpart H—Other Requirements

SOURCE: 61 FR 31728, June 20, 1996, unless otherwise noted.

§68.200 Recordkeeping.

The owner or operator shall maintain records supporting the implementation of this part for five years unless otherwise provided in subpart D of this part.

§68.210 Availability of information to the public.

(a) The RMP required under subpart G of this part shall be available to the public under 42 U.S.C. 7414(c).

(b) The disclosure of classified information by the Department of Defense or other Federal agencies or contractors of such agencies shall be con-

trolled by applicable laws, regulations, or executive orders concerning the release of classified information.

§68.215 Permit content and air permitting authority or designated agency requirements.

(a) These requirements apply to any stationary source subject to this part 68 and parts 70 or 71 of this chapter. The 40 CFR part 70 or part 71 permit for the stationary source shall contain:

(1) A statement listing this part as an applicable requirement;

(2) Conditions that require the source owner or operator to submit:

(i) A compliance schedule for meeting the requirements of this part by the date provided in §68.10(a) or;

(ii) As part of the compliance certification submitted under 40 CFR 70.6(c)(5), a certification statement that the source is in compliance with all requirements of this part, including the registration and submission of the RMP.

(b) The owner or operator shall submit any additional relevant information requested by the air permitting authority or designated agency.

(c) For 40 CFR part 70 or part 71 permits issued prior to the deadline for registering and submitting the RMP and which do not contain permit conditions described in paragraph (a) of this section, the owner or operator or air permitting authority shall initiate permit revision or reopening according to the procedures of 40 CFR 70.7 or 71.7 to incorporate the terms and conditions consistent with paragraph (a) of this section.

(d) The state may delegate the authority to implement and enforce the requirements of paragraph (e) of this section to a state or local agency or agencies other than the air permitting authority. An up-to-date copy of any delegation instrument shall be maintained by the air permitting authority. The state may enter a written agreement with the Administrator under which EPA will implement and enforce the requirements of paragraph (e) of this section.

(e) The air permitting authority or the agency designated by delegation or agreement under paragraph (d) of this section shall, at a minimum:

(1) Verify that the source owner or operator has registered and submitted an RMP or a revised plan when required by this part;

(2) Verify that the source owner or operator has submitted a source certification or in its absence has submitted a compliance schedule consistent with paragraph (a)(2) of this section;

(3) For some or all of the sources subject to this section, use one or more mechanisms such as, but not limited to, a completeness check, source audits, record reviews, or facility inspections to ensure that permitted sources are in compliance with the requirements of this part; and

(4) Initiate enforcement action based on paragraphs (e)(1) and (e)(2) of this section as appropriate.

§ 68.220 Audits.

(a) In addition to inspections for the purpose of regulatory development and enforcement of the Act, the implementing agency shall periodically audit RMPs submitted under subpart G of this part to review the adequacy of such RMPs and require revisions of RMPs when necessary to ensure compliance with subpart G of this part.

(b) The implementing agency shall select stationary sources for audits based on any of the following criteria:

(1) Accident history of the stationary source;

(2) Accident history of other stationary sources in the same industry;

(3) Quantity of regulated substances present at the stationary source;

(4) Location of the stationary source and its proximity to the public and environmental receptors;

(5) The presence of specific regulated substances;

(6) The hazards identified in the RMP; and

(7) A plan providing for neutral, random oversight.

(c) Exemption from audits. A stationary source with a Star or Merit ranking under OSHA's voluntary protection program shall be exempt from audits under paragraph (b)(2) and (b)(7) of this section.

(d) The implementing agency shall have access to the stationary source, supporting documentation, and any

area where an accidental release could occur.

(e) Based on the audit, the implementing agency may issue the owner or operator of a stationary source a written preliminary determination of necessary revisions to the stationary source's RMP to ensure that the RMP meets the criteria of subpart G of this part. The preliminary determination shall include an explanation for the basis for the revisions, reflecting industry standards and guidelines (such as AIChE/CCPS guidelines and ASME and API standards) to the extent that such standards and guidelines are applicable, and shall include a timetable for their implementation.

(f) *Written response to a preliminary determination.* (1) The owner or operator shall respond in writing to a preliminary determination made in accordance with paragraph (e) of this section. The response shall state the owner or operator will implement the revisions contained in the preliminary determination in accordance with the timetable included in the preliminary determination or shall state that the owner or operator rejects the revisions in whole or in part. For each rejected revision, the owner or operator shall explain the basis for rejecting such revision. Such explanation may include substitute revisions.

(2) The written response under paragraph (f)(1) of this section shall be received by the implementing agency within 90 days of the issue of the preliminary determination or a shorter period of time as the implementing agency specifies in the preliminary determination as necessary to protect public health and the environment. Prior to the written response being due and upon written request from the owner or operator, the implementing agency may provide in writing additional time for the response to be received.

(g) After providing the owner or operator an opportunity to respond under paragraph (f) of this section, the implementing agency may issue the owner or operator a written final determination of necessary revisions to the stationary source's RMP. The final determination may adopt or modify the revisions contained in the preliminary

determination under paragraph (e) of this section or may adopt or modify the substitute revisions provided in the response under paragraph (f) of this section. A final determination that adopts a revision rejected by the owner or operator shall include an explanation of the basis for the revision. A final determination that fails to adopt a substitute revision provided under paragraph (f) of this section shall include an explanation of the basis for finding such substitute revision unreasonable.

(h) Thirty days after completion of the actions detailed in the implementation schedule set in the final determination under paragraph (g) of this section, the owner or operator shall be

in violation of subpart G of this part and this section unless the owner or operator revises the RMP prepared under subpart G of this part as required by the final determination, and submits the revised RMP as required under § 68.150.

(i) The public shall have access to the preliminary determinations, responses, and final determinations under this section in a manner consistent with § 68.210.

(j) Nothing in this section shall preclude, limit, or interfere in any way with the authority of EPA or the state to exercise its enforcement, investigatory, and information gathering authorities concerning this part under the Act.

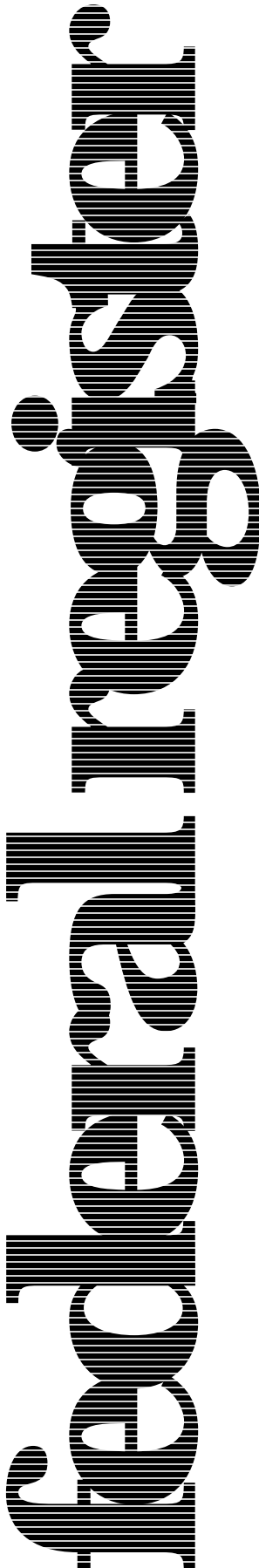
APPENDIX A TO PART 68—TABLE OF TOXIC ENDPOINTS
[As defined in §68.22 of this part]

CAS No.	Chemical name	Toxic end-point (mg/L)
107-02-8	Acrolein [2-Propenal]	0.0011
107-13-1	Acrylonitrile [2-Propenenitrile]	0.076
814-68-6	Acetyl chloride [2-Propenoyl chloride]	0.00090
107-18-6	Allyl alcohol [2-Propen-1-ol]	0.036
107-11-9	Allylamine [2-Propen-1-amine]	0.0032
7664-41-7	Ammonia (anhydrous)	0.14
7664-41-7	Ammonia (conc 20% or greater)	0.14
7784-34-1	Arsenous trichloride	0.010
7784-34-1	Arsine	0.0019
10294-34-5	Boron trichloride [Borane, trichloro-]	0.010
7637-07-2	Boron trifluoride [Borane, trifluoro-]	0.028
353-42-4	Boron trifluoride compound with methyl ether (1:1) [Boron, trifluoro[oxybis(methane)]-, T-4	0.023
7726-95-6	Bromine	0.0065
75-15-0	Carbon disulfide	0.16
7782-50-5	Chlorine	0.0087
10049-04-4	Chlorine dioxide [Chlorine oxide (ClO ₂)]	0.0028
67-66-3	Chloroform [Methane, trichloro-]	0.49
542-88-1	Chloromethyl ether [Methane, oxybis(chloro-)]	0.00025
107-30-2	Chloromethyl methyl ether [Methane, chloromethoxy-]	0.0018
4170-30-3	Crotonaldehyde [2-Butenal]	0.029
123-73-9	Crotonaldehyde, (E)-, [2-Butenal, (E)-]	0.029
506-77-4	Cyanogen chloride	0.030
108-91-8	Cyclohexylamine [Cyclohexanamine]	0.16
19287-45-7	Diborane	0.0011
75-78-5	Dimethyldichlorosilane [Silane, dichlorodimethyl-]	0.026
57-14-7	1,1-Dimethylhydrazine [Hydrazine, 1,1-dimethyl-]	0.012
106-89-8	Epichlorohydrin [Oxirane, (chloromethyl)-]	0.076
107-15-3	Ethylenediamine [1,2-Ethanediamine]	0.49
151-56-4	Ethylenimine [Aziridine]	0.018
75-21-8	Ethylene oxide [Oxirane]	0.090
7782-41-4	Fluorine	0.0039
50-00-0	Formaldehyde (solution)	0.012
110-00-9	Furan	0.0012
302-01-2	Hydrazine	0.011
7647-01-0	Hydrochloric acid (conc 37% or greater)	0.030
74-90-8	Hydrocyanic acid	0.011
7647-01-0	Hydrogen chloride (anhydrous) [Hydrochloric acid]	0.030
7664-39-3	Hydrogen fluoride/Hydrofluoric acid (conc 50% or greater) [Hydrofluoric acid]	0.016
7783-07-5	Hydrogen selenide	0.00066
7783-06-4	Hydrogen sulfide	0.042
13463-40-6	Iron, pentacarbonyl [Iron carbonyl (Fe(CO) ₅), (TB-5-11)-]	0.00044
78-82-0	Isobutyronitrile [Propanenitrile, 2-methyl-]	0.14
108-23-6	Isopropyl chloroformate [Carbonochloride acid, 1-methylethyl ester]	0.10
126-98-7	Methacrylonitrile [2-Propenenitrile, 2-methyl-]	0.0027

APPENDIX A TO PART 68—TABLE OF TOXIC ENDPOINTS—Continued
[As defined in §68.22 of this part]

CAS No.	Chemical name	Toxic end-point (mg/L)
74-87-3	Methyl chloride [Methane, chloro-]	0.82
79-22-1	Methyl chloroformate [Carbonochloridic acid, methylester]	0.0019
60-34-4	Methyl hydrazine [Hydrazine, methyl-]	0.0094
624-83-9	Methyl isocyanate [Methane, isocyanato-]	0.0012
74-93-1	Methyl mercaptan [Methanethiol]	0.049
556-64-9	Methyl thiocyanate [Thiocyanic acid, methyl ester]	0.085
75-79-6	Methyltrichlorosilane [Silane, trichloromethyl-]	0.018
13463-39-3	Nickel carbonyl	0.00067
7697-37-2	Nitric acid (conc 80% or greater)	0.026
10102-43-9	Nitric oxide [Nitrogen oxide (NO)]	0.031
8014-95-7	Oleum (Fuming Sulfuric acid) [Sulfuric acid, mixture with sulfur trioxide]	0.010
79-21-0	Peracetic acid [Ethaneperoxoic acid]	0.0045
594-42-3	Perchloromethylmercaptan [Methanesulfinyl chloride, trichloro-]	0.0076
75-44-5	Phosgene [Carbonic dichloride]	0.00081
7803-51-2	Phosphine	0.0035
10025-87-3	Phosphorus oxychloride [Phosphoryl chloride]	0.0030
7719-12-2	Phosphorus trichloride [Phosphorous trichloride]	0.028
110-89-4	Piperidine	0.022
107-12-0	Propionitrile [Propanenitrile]	0.0037
109-61-5	Propyl chloroformate [Carbonochloridic acid, propylester]	0.010
75-55-8	Propyleneimine [Aziridine, 2-methyl-]	0.12
75-56-9	Propylene oxide [Oxirane, methyl-]	0.59
7446-09-5	Sulfur dioxide (anhydrous)	0.0078
7783-60-0	Sulfur tetrafluoride [Sulfur fluoride (SF ₄), (T-4)-]	0.0092
7446-11-9	Sulfur trioxide	0.010
75-74-1	Tetramethyllead [Plumbane, tetramethyl-]	0.0040
509-14-8	Tetranitromethane [Methane, tetranitro-]	0.0040
7750-45-0	Titanium tetrachloride [Titanium chloride (TiCl ₄) (T-4)-]	0.020
584-84-9	Toluene 2,4-diisocyanate [Benzene, 2,4-diisocyanato-1-methyl-]	0.0070
91-08-7	Toluene 2,6-diisocyanate [Benzene, 1,3-diisocyanato-2-methyl-]	0.0070
26471-62-5	Toluene diisocyanate (unspecified isomer) [Benzene, 1,3-diisocyanatomethyl-]	0.0070
75-77-4	Trimethylchlorosilane [Silane, chlorotrimethyl-]	0.050
108-05-4	Vinyl acetate monomer [Acetic acid ethenyl ester]	0.26

[61 FR 31729, June 20, 1996, as amended at 62 FR 45132, Aug. 25, 1997]



Wednesday
January 6, 1999

Part IV

**Environmental
Protection Agency**

**40 CFR Part 68
Accidental Release Prevention
Requirements; Risk Management
Programs Under Clean Air Act Section
112(r)(7), Amendments; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 68**

[FRL-6214-9]

RIN 2050-AE46

Accidental Release Prevention Requirements; Risk Management Programs Under Clean Air Act Section 112(r)(7); Amendments**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: This action modifies the chemical accident prevention rule codified in 40 CFR Part 68. The chemical accident prevention rule requires owners and operators of stationary sources subject to the rule to submit a risk management plan (RMP) by June 21, 1999, to a central location specified by EPA. In this action, EPA is

amending the rule to: add four mandatory and five optional RMP data elements, establish specific procedures for protecting confidential business information when submitting RMPs, adopt the government's use of a new industry classification system, and make technical corrections and clarifications to Part 68. However, as stated in the proposed rule for these amendments, this action does not address issues concerning public access to offsite consequence analysis data in the RMP.

DATES: The rule is effective February 5, 1999.

ADDRESSES: Supporting material used in developing the proposed rule and final rule is contained in Docket A-98-08. The docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday (except government holidays) at Room 1500, 401 M Street SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob or John Ferris, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency (5104), 401 M Street SW, Washington, DC 20460, (202) 260-7249 or (202) 260-4043, respectively; or the Emergency Planning and Community Right-to-Know Hotline at 800-424-9346 (in the Washington, DC metropolitan area, (703) 412-9810). You may wish to visit the Chemical Emergency Preparedness and Prevention Office (CEPPO) Internet site, at www.epa.gov/ceppo.

SUPPLEMENTARY INFORMATION:**Regulated Entities**

Entities potentially regulated by this action are those stationary sources that have more than a threshold quantity of a regulated substance in a process. Regulated categories and entities include:

Category	Examples of regulated entities
Chemical Manufacturers	Basic chemical manufacturing, petrochemicals, resins, agricultural chemicals, pharmaceuticals, paints, cleaning compounds.
Petroleum	Refineries.
Other Manufacturing	Paper, electronics, semiconductors, fabricated metals, industrial machinery, food processors.
Agriculture	Agricultural retailers.
Public Sources	Drinking water and waste water treatment systems.
Utilities	Electric utilities.
Other	Propane retailers and users, cold storage, warehousing, and wholesalers.
Federal Sources	Military and energy installations.

This table is not meant to be exhaustive, but rather provides a guide for readers to indicate those entities likely to be regulated by this action. The table lists entities EPA is aware of that could potentially be regulated by this action. Other entities not listed in the table could also be regulated. To determine whether a stationary source is regulated by this action, carefully examine the provisions associated with the list of substances and thresholds under § 68.130 and the applicability criteria under § 68.10. If you have questions regarding applicability of this action to a particular entity, consult the hotline or persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Table of Contents

- I. Introduction and Background
 - A. Statutory Authority
 - B. Background
- II. Summary of the Final Rule
- III. Discussion of Issues
 - A. NAICS Codes
 - B. RMP Data Elements
 - C. Prevention Program Reporting
 - D. Confidential Business Information
 - E. Other Issues

- F. Technical Corrections
- IV. Section-by-Section Discussion of the Final Rule
- V. Judicial Review
- VI. Administrative Requirements
 - A. Docket
 - B. Executive Order 12866
 - C. Executive Order 12875
 - D. Executive Order 13045
 - E. Executive Order 13084
 - F. Regulatory Flexibility
 - G. Paperwork Reduction
 - H. Unfunded Mandates Reform Act
 - I. National Technology Transfer and Advancement Act
 - J. Congressional Review Act

I. Introduction and Background**A. Statutory Authority**

These amendments are being promulgated under sections 112(r) and 301(a)(1) of the Clean Air Act (CAA) as amended (42 U.S.C. 7412(r), 7601(a)(1)).

B. Background

The 1990 CAA Amendments added section 112(r) to provide for the prevention and mitigation of accidental chemical releases. Section 112(r) mandates that EPA promulgate a list of "regulated substances," with threshold

quantities. Processes at stationary sources that contain a threshold quantity of a regulated substance are subject to accidental release prevention regulations promulgated under CAA section 112(r)(7). EPA promulgated the list of regulated substances on January 31, 1994 (59 FR 4478) (the "List Rule") and the accidental release prevention regulations creating the risk management program requirements on June 20, 1996 (61 FR 31668) (the "RMP Rule"). Together, these two rules are codified as 40 CFR Part 68. EPA amended the List Rule on August 25, 1997 (62 FR 45132), to change the listed concentration of hydrochloric acid. On January 6, 1998 (63 FR 640), EPA amended the List Rule to delist Division 1.1 explosives (classified by DOT), to clarify certain provisions related to regulated flammable substances and to clarify the transportation exemption.

Part 68 requires that sources with more than a threshold quantity of a regulated substance in a process develop and implement a risk management program that includes a five-year accident history, offsite consequence analyses, a prevention

program, and an emergency response program. In Part 68, processes are divided into three categories (Programs 1 through 3). Processes that have no potential impact on the public in the case of accidental releases have minimal requirements (Program 1). Processes in Programs 2 and 3 have additional requirements based on the potential for offsite consequences associated with the worst-case accidental release and their accident history. Program 3 is also triggered if the processes are subject to OSHA's Process Safety Management (PSM) Standard. By June 21, 1999, sources must submit to a location designated by EPA, a risk management plan (RMP) that summarizes their implementation of the risk management program.

When EPA promulgated the risk management program regulations, it stated that it intended to work toward electronic submission of RMPs. The Accident Prevention Subcommittee of the CAA Advisory Committee convened an Electronic Submission Workgroup to examine technical and practical issues associated with creating a national electronic repository for RMPs. Based on workgroup recommendations, EPA is in the process of developing two systems, a user-friendly PC-based submission system (RMP*Submit) and a database of RMPs (RMP*Info).

The Electronic Submission Workgroup also recommended that EPA add some mandatory and optional data elements to the RMP and asked EPA to clarify how confidential business information (CBI) submitted in the RMP would be handled. Based on these recommendations and requests for clarifications, EPA proposed amendments to Part 68 on April 17, 1998 (63 FR 19216). These amendments proposed to replace the use of Standard Industrial Classification (SIC) codes with the North American Industry Classification System (NAICS) codes, add four mandatory data elements to the RMP, add five optional data elements to the RMP, establish specific requirements for submission of information claimed CBI, and make technical corrections and clarifications to the rule. EPA received 47 written comments on the proposed rule. Today's rule reflects EPA's consideration of all comments; major issues raised by commenters and EPA's responses are discussed in Section III of this preamble. A summary of all comments submitted and EPA's responses can be found in a document entitled, *Accidental Release Prevention Requirements; Risk Management Programs Under Clean Air Act Section 112(r)(7); Amendments: Summary and*

Response to Comments, in the Docket (see **ADDRESSES**).

II. Summary of the Final Rule

NAICS Codes

On January 1, 1997, the U.S. Government, in cooperation with the governments of Canada and Mexico, adopted a new industry classification system, the North American Industry Classification System (NAICS), to replace the Standard Industrial Classification (SIC) codes (April 9, 1997, 62 FR 17288). The applicability of some Part 68 requirements (i.e., Program 3 prevention requirements) is determined, in part, by SIC codes, and Part 68 also requires the reporting of SIC codes in the RMP. Therefore, EPA is revising Part 68 to replace all references to "SIC code" with "NAICS code." In addition, EPA is replacing, as proposed, the nine SIC codes subject to Program 3 prevention program requirements with ten NAICS codes, as follows:

NAICS	Sector
32211	Pulp mills
32411	Petroleum refineries
32511	Petrochemical manufacturing
325181	Alkalies and chlorine
325188	All other inorganic chemical manufacturing
325192	Other cyclic crude and intermediate manufacturing
325199	All other basic organic chemical manufacturing
325211	Plastics and resins
325311	Nitrogen fertilizer
32532	Pesticide and other agricultural chemicals

NAICS codes are either five or six digits, depending on the degree to which the sector is subdivided.

RMP Data Elements

As proposed, EPA is adding four new data elements to the RMP: latitude/longitude method and description, CAA Title V permit number, percentage weight of a toxic substance in a liquid mixture, and NAICS code for each process that had an accidental release reported in the five-year accident history. EPA is also adding five optional data elements: local emergency planning committee (LEPC) name, source or parent company e-mail address, source homepage address, phone number at the source for public inquiries, and status under OSHA's Voluntary Protection Program (VPP).

Prevention Program Reporting

EPA is not revising Sections 68.170 and 68.175 as proposed. Prevention program reporting, therefore, will not be changed to require a prevention program for each portion of a process for which a Process Hazard Analysis (PHA)

or hazard review was conducted. Instead, EPA plans to create functions within RMP*Submit to provide stationary sources with a flexible way of explaining the scope and content of each prevention program they implement at their facility.

Confidential Business Information

EPA is clarifying how confidential business information (CBI) submitted in the RMP will be handled. EPA has determined that the information required by certain RMP data elements does not meet the criteria for CBI and therefore may not be claimed as such. The Agency is also requiring submission of substantiation at the time a CBI claim is filed.

Finally, EPA is promulgating several of the technical corrections and clarifications, as proposed in the **Federal Register**, April 17, 1998 (63 FR 19216).

III. Discussion of Issues

EPA received 47 comments on the proposed rule. The commenters included chemical manufacturers, petroleum refineries, environmental groups, trade associations, a state agency, and members of the public. The major issues raised by commenters are addressed briefly below. The Agency's complete response to comments received on this rulemaking is available in the docket (see **ADDRESSES**). The document is titled *Accidental Release Prevention Requirements; Risk Management Programs Under Clean Air Act Section 112(r)(7); Amendments: Summary and Response to Comments*.

A. NAICS Codes

Two commenters asked that sources be given the option to use either SIC codes or NAICS codes, or both, in their initial RMP because the NAICS system is new and may not be familiar to sources. EPA disagrees with this suggestion. EPA intends to provide several outreach mechanisms to assist sources in identifying their new NAICS code. RMP*Submit will provide a "pick list" that will make it easier for sources to find the appropriate code. Also, selected NAICS codes are included in the General Guidance for Risk Management Programs (July 1998) and in the industry-specific guidance documents that EPA is developing. EPA will also utilize the Emergency Planning and Community Right-to-Know Hotline at 800-424-9346 (or 703-412-9810) and its web site at www.epa.gov/ceppo/, to assist sources in determining the source's NAICS codes. EPA also notes that the Internal Revenue Service is planning to require businesses to

provide NAICS-based activity codes on their 1998 tax returns, so many sources will have become familiar with their NAICS codes by the June 1999 RMP deadline.

EPA believes it is necessary and appropriate to change from SIC codes to NAICS codes at this time. EPA recognizes that NAICS codes were developed for statistical purposes by the Office of Management and Budget (OMB). In the notice of April 9, 1997 (62 FR 17288) OMB stated that the "[u]se of NAICS for nonstatistical purposes (e.g., administrative, regulatory, or taxation) will be determined by the agency or agencies that have chosen to use the SIC for nonstatistical purposes." EPA has determined that NAICS is appropriate in this rule for several reasons. First, the reason the SIC codes were replaced by NAICS codes is because the SIC codes no longer accurately represent today's industries. The SIC codes will become more obsolete over time because OMB will no longer be supporting the SIC codes; therefore, no new or modified SIC codes will be developed to reflect future changes in industries. Second, as the SIC codes become obsolete, most users of SIC codes will likely change to NAICS codes over time, so future data sharing and consistency will be enhanced by use of NAICS codes in the RMP program. Third, through this rulemaking process, EPA has analyzed specific conversions of SIC codes to NAICS codes for the RMP program and was able to identify NAICS codes that were applicable to fulfilling the purposes of this rule. Finally, because the RMP reporting requirement is new, it is reasonable to begin the program with NAICS codes now rather than converting to them later.

Three commenters expressed support for the ten NAICS codes that EPA proposed to use in place of the nine SIC codes referenced in section 68.10(d)(1) of Part 68 and one commenter partially objected. Section 68.10(d)(1) provides that processes in the referenced codes are subject to Program 3 requirements (if not eligible for Program 1). One commenter objected to EPA's proposal to replace the SIC code for pulp and paper mills with only the NAICS code for pulp mills that do not also produce paper or paperboard. The commenter asked EPA to reexamine the accident history of paper and paperboard mills. As discussed in the preamble of the proposed rule, EPA reviewed the accident history data prior to proposing the new NAICS codes. Neither facilities that classify themselves as paper mills (NAICS Code 322121) nor paperboard mills (NAICS code 32213) met the accident history criteria that EPA used

to select industrial sectors for Program 3.

EPA notes that a pulp process at a paper or a paperboard mill may still be subject to Program 3 as long as the process contains more than a threshold quantity of a regulated substance and is not eligible for Program 1. Section 68.10(d)(1) uses industrial codes to classify processes, not facilities as a whole. Since section 68.10(d)(1) will continue to list the code for pulp mills, pulpmaking processes will continue to be subject to Program 3. In addition, under section 68.10(d)(2), paper processes will be in Program 3 (unless eligible for Program 1) if they are subject to OSHA's Process Safety Management (PSM) standard. Most pulp and paper processes are, in fact, subject to this standard.

One commenter objected to assigning NAICS codes to a process rather than the source as a whole. EPA first notes that the requirement to assign a SIC code to a process was adopted in the original RMP rulemaking two years ago. Today's rule does not change that requirement except to substitute NAICS for SIC codes. In any event, EPA is today modifying Part 68 to clarify that sources provide the NAICS code that "most closely corresponds to the process." EPA believes that assigning an industry code to a process will help implementing agencies and the public understand what the covered process does; using the code makes it possible to provide this information without requiring a detailed explanation from the source. In addition, the primary NAICS code for a source as a whole may not reflect the activity of the covered process.

B. RMP Data Elements

EPA proposed to add, as optional RMP data elements: local emergency planning committee (LEPC), source (or parent company) E-mail address, source homepage address, phone number at the source for public inquiries, and OSHA Voluntary Protection Program (VPP) status. EPA also proposed to add, as mandatory data elements: method and description of latitude/longitude, Title V permit number, percent weight of a toxic substance in a liquid mixture, and NAICS code (only in the five-year accident history section).

Commenters generally supported the new optional data elements. One commenter requested that the optional elements be made mandatory. EPA disagrees with this comment. While the elements are useful, many sources covered by this rule will not have e-mail addresses or home pages. The RMP will provide both addresses and phone

numbers so that the public will have methods to reach the source. EPA has learned that in some areas there are no functioning LEPCs, therefore, at this time, EPA will not add this as a mandatory data element. However, in most cases, the LEPC for an area can be determined by contacting the local government or the State Emergency Response Commission (SERC) for which the area is located. Therefore, reporting these data elements will remain optional at this time.

One commenter supported adding the listing of local emergency planning committee in the RMP data elements as an optional data element. The commenter stated that, although it is an optional data element, this listing will enhance the ability of local responders and emergency planners to adequately prepare and train for emergency events.

Of the data elements that were proposed to be mandatory, one commenter objected to the addition of latitude/longitude method and description. The commenter stated that it was not clear in the proposal why the method and description information is needed. EPA is seeking latitude/longitude method and description in accordance with its Locational Data Policy. Several EPA regulations require sources to provide their latitude and longitude, so that EPA can more readily locate facilities and communicate data between Agency offices. Sharing of data between EPA offices reduces duplication of information. Latitude/longitude method and description provides information needed by EPA offices, and other users of the data, to rectify discrepancies that may appear in the latitude and longitude information provided by the source under various EPA requirements. Documentation of the method by which the latitude and longitude are determined and a description of the location point referenced by the latitude and longitude (e.g., administration building) will permit data users to evaluate the accuracy of those coordinates, thus addressing EPA data sharing and integration objectives.

EPA believes this information will also facilitate EPA-State coordination of environmental programs, including the chemical accident prevention rule. The State/EPA Data Management Program is a successful multi-year initiative linking State environmental regulatory agencies and EPA in cooperative action. The Program's goals include improvements in data quality and data integration based on location identification. Therefore, as proposed, the latitude/longitude method and description will be added to the existing RMP data

elements. RMP*Submit will provide a list of methods and descriptions from which sources may choose.

EPA also proposed to require that sources report the percentage weight (weight percent) of a toxic substance in a mixture in the offsite consequence analysis (OCA) and the accident history sections of the RMP. This information is necessary for users of RMP data to understand how worst case and alternative release scenarios have been modeled. EPA has decided to require reporting of the weight percent of toxic substance in a liquid mixture because this information is necessary to understand the volatilization rate, which determines the downwind dispersion distance of the substance. The volatilization rate is affected by the vapor pressure of the substance in the mixture. For example, a spill of 70 percent hydrofluoric acid (HF) will volatilize more quickly than a spill of the same quantity of HF in a 50 percent solution; consequently, over a 10-minute period, the 70 percent solution will travel further. Reviewers of the RMP data, including local emergency planning committees, need to know the weight percent to be able to evaluate the results reported in the offsite consequence analysis and the impacts reported in the accident history. Without knowing the weight percent of the substance in the mixture, users of the data may compare scenarios or incidents that appear to involve the same chemical in the same physical state, but in fact involve the same chemical held in a different physical state.

One commenter stated that for gas mixtures, percentage by volume (or volume percent) should be required to be reported rather than weight percent. In this final rule, EPA does not require reporting of the weight percent (or volume percent) of a regulated substance in a gas mixture. If a source handles regulated substances in a gaseous mixture (e.g., chlorine with hydrogen chloride), the quantity of a particular regulated substance in the mixture is what is reported in the RMP, since that is what would be released into the air. Its percentage weight in the mixture is irrelevant.

Another commenter objected to this data element, claiming that it could result in reverse engineering and create a competitive disadvantage. EPA does not believe that this requirement would create a competitive disadvantage, since similar information is available to the public under Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986. Even so, if it were to have such an effect, sources can claim this element

as CBI if it can meet the criteria for CBI claims in 40 CFR Part 2. Another commenter stated that the public would be concerned if the percentages did not add to 100, in the event that the source handles both regulated and non-regulated substances. EPA believes that because a source must model only one substance in a release scenario, the source need not report the percentages of the other substances in the mixture. Therefore, it is expected that the weight percent for mixtures would not always add up to 100, because the mixture could contain non-regulated substances.

A third commenter suggested that requiring sources to report percentage weight of a toxic substance in a liquid mixture would create confusion with the reporting of mixtures containing flammable regulated substances.

In the January 6, 1998 rule (63 FR 640), EPA clarified that flammable regulated substances in mixtures are only covered by the RMP rule if the entire mixture meets the National Fire Protection Association (NFPA) criteria of 4, thus the entire mixture becomes the regulated substance. As a result, the percentage of flammables in a mixture is not relevant under the rule and the requirement to report the percentage weight will only apply to toxic substances in a liquid mixture.

Finally, in the **Federal Register** notice of June 20, 1996 (61 FR 31688), EPA clarified the relationship between the risk management program and the air permit program under Title V of the CAA for sources subject to both requirements. Under section 502(b)(5)(A), permitting authorities must have the authority to assure compliance by all covered sources with each applicable CAA standard, regulation or requirement, including the regulations implementing section 112(r)(7). Requiring sources covered by Title V and section 112(r) to provide their Title V permit number will help Title V permitting authorities assure that each source is complying with the RMP rule.

In summary, with the exception of adding the phrase "that most closely corresponds to the process" in sections 68.42(b)(4), 68.160(b)(7), 68.170(b), and 68.175(b), EPA has decided to finalize the optional and mandatory data elements as they were proposed.

C. Prevention Program Reporting

The final RMP rule, issued June 20, 1996 (61 FR 31668), requires sources to report their prevention program for each "process." Because the applicable definition of "process" is broad, multiple production and storage units might be a single, complex "process."

However, the Agency realizes that some elements of a source's prevention program for a process may not be applicable to every portion of the process. In such a situation, reporting prevention program information for the process as a whole could be misleading without an explanation of which prevention program element applies to which part of the process. In order to get more specific information on which prevention program practices apply to different production and storage units within a process, EPA proposed to revise the rule to require prevention program reporting for each part of the process for which a separate process hazard analysis (PHA) or hazard review was conducted. EPA further proposed deleting the second sentence from both sections 68.170(a) and 68.175(a), which presently states that, "[i]f the same information applies to more than one covered process, the owner or operator may provide the information only once, but shall indicate to which process the information applies."

A number of industry commenters objected to the proposed revisions as wrongly assuming that a one-to-one relationship exists between a prevention program and a PHA. The commenters asserted that EPA's proposed revision did not reflect how facilities conduct PHAs or implement prevention measures and would cause significant duplicate reporting, creating unnecessary extra work for facility personnel. One commenter explained that depending on a source's circumstances, it might conduct a PHA for each production line, including all of its different units, or it might conduct a PHA for each common element of its different production lines. Accordingly, the commenters claimed that EPA's proposal to require the owner/operator to submit separate prevention program information for every portion of a process covered by a PHA would result in multiple submissions of much of the same material, and would add no value to process safety or accidental release prevention. Commenters also opposed the deletion of the second sentence in sections 68.170(a) and 68.175(a). One commenter noted that many of the elements of the prevention program will not only be common to a process, but will be common to an entire stationary source. Thus commenters argued that EPA's proposals would result in redundant submittals and place an unjustified burden on the regulated community.

EPA acknowledges that PHAs do not necessarily determine the scope of prevention program measures. Moreover, EPA agrees that duplicative

reporting should be reduced as much as possible. At the same time, EPA, implementing agencies, and other users of RMP data need to have information that is detailed enough to understand the hazards posed by, and the safety practices used for, particular parts of processes and equipment. EPA recognizes that some aspects of prevention programs are likely to be implemented facility-wide, rather than on a process or unit basis, whereas other aspects may apply to a particular process or only to particular units within a process. For example, most sources are likely to develop an employee participation plan and a system for hot work permits facility-wide, rather than on a process or unit basis. For sources having processes that include several units (e.g., multiple reactors or purification systems), the hazards, process controls, and mitigation systems may vary among the individual units. For example, one may have a deluge fire control system while another may have a runaway reaction quench system.

EPA has concluded that its proposed changes to prevention program reporting would not lead sources to prepare RMPs that accurately and efficiently communicate the hazards posed by different aspects of covered processes and the safety practices used to address those hazards. The Agency now believes that no rule changes are necessary to ensure that RMPs convey that information. The current rule already requires prevention program reporting, and the issue has been how to efficiently convey that information in sufficient detail. EPA believes that its electronic program for submitting RMPs can be designed to provide for sufficient specificity in prevention program reporting without requiring duplicative reporting. In particular, the Agency plans to create a comment/text field in RMP*Submit for specifying which parts of a prevention program apply to which portions of a particular process. For example, if a deluge system only applies to a certain part of the overall process, the source would indicate in the comment/text screen the portions of the process to which the deluge system applies.

To reduce the burden of reporting, EPA also plans to create a function in RMP*Submit which will allow a source to automatically copy prevention program data previously entered for one process to fill blank fields in another process's prevention program. The source could then edit any of the data elements that are different. For example, where the prevention programs for two processes are identical (e.g., two

identical storage tanks that are considered separate processes), the source could copy the data entered for one to fill in the blank field for the other. If some of the data elements vary between the prevention programs, the source will be able to autofill and change only those items that vary among processes or units.

Although the autofill option will minimize the burden of reporting common data elements for those sources filing electronically, EPA has decided not to delete the sentence, in both sections 68.170(a) and 68.175(a), which states, "[i]f the same information applies to more than one covered process, the owner or operator may provide the information only once, but shall indicate to which processes the information applies", as proposed.

D. Confidential Business Information (CBI)

1. Background

A central element of the chemical accident prevention program as established by the Clean Air Act and implemented by Part 68 is providing state and local governments and the public with information about the risk of chemical accidents in their communities and what stationary sources are doing to prevent such accidents. As explained in the preamble to the final RMP rule (61 FR 31668, June 20, 1996), every covered stationary source is required to develop and implement a risk management program and provide information about that program in its RMP. Under CAA section 112(r)(7)(B)(iii), a source's RMP must be registered with EPA and also submitted to the Federal Chemical Safety and Hazard Investigation Board ("the Board"), the state in which the source is located, and any local entity responsible for emergency response or planning. That section also provides that RMPs "shall be available to the public under section 114(c)" of the CAA. Section 114(c) gives the public access to information obtained under the Clean Air Act except for information (other than emission data) that would divulge trade secrets.

As noted previously, in the final RMP rule EPA announced its plan to develop a centralized system for submitting electronic versions of RMPs that would reduce the paperwork burden on both industry and receiving agencies and provide ready public access to RMP data. Under the system, a covered source would submit its RMP on computer diskette, which would be entered into a central database that all interested parties could access

electronically. The system would thus make it possible for a single RMP submission to reach all interested parties, including those identified in section 112(r)(7)(B)(iii).¹

An important assumption underlying the Agency's central submission plan was that RMPs would rarely, if ever, contain confidential business information (CBI). Following publication of the final rule, concerns were raised that at least some of the information required to be reported in RMPs could be CBI in the case of particular sources. While the June 20, 1996 rule provided for protection of CBI under section 114(c) (see section 68.210(a)), EPA was asked to address how CBI would be protected in the context of the electronic programs being developed for RMP submission and public access.

In the April 17, 1998 proposal to revise the RMP rule, EPA made several proposals concerning protection of CBI. It first reviewed the information requirements for RMPs (sections 68.155–185) and proposed to find that certain required data elements would not entail divulging information that could meet the test for CBI set forth in the Agency's comprehensive CBI regulations at 40 CFR Part 2.² Information provided in response to those requirements could not be claimed CBI. EPA also requested comment on whether some information that might be claimed as CBI (e.g., worst-case release rate or duration) would be "emission data" and thus publicly available under section 114(c) even if CBI.

EPA administers a variety of statutes pertaining to the protection of the environment, each with its own data collection requirements and requirements for disclosure of information to the public. In the implementation of these statutes, the Agency collects emission, chemical, process, waste stream, financial, and other data from facilities in many, if not most, sectors of American business. Companies may consider some of this information vital to their competitive

¹ It is important to note that, as discussed in Section III. E of this preamble, this rule does not address issues concerning public access to offsite consequence analysis data in the RMP.

² Information is CBI if (1) the business has asserted a claim which has not expired, been waived, or been withdrawn; (2) the business has shown that it has taken and will continue to take reasonable steps to protect the information from disclosure; (3) the information is not and has not been reasonably obtainable by the public (other than governmental bodies) by use of legitimate means; (4) no statute requires disclosure of the information; and (5) disclosure of the information is likely to cause substantial harm to the business' competitive position. 40 CFR section 2.208.

position, and claim it as confidential business information (CBI).

In the course of implementing statutes, the Agency may have a need to communicate some or all of the information it collects to the public as the basis for a rulemaking, to its contractors, or in response to requests pursuant to the Freedom of Information Act (FOIA). Information found to be CBI is exempt from disclosure under FOIA. To manage both CBI claims and FOIA requests, EPA has promulgated in 40 CFR Part 2, Subpart B a set of procedures for reviewing CBI claims, releasing information found not to be CBI, and where authorized, disclosing CBI. Subpart B lists the criteria that information must meet in order to be considered CBI, as well as the special handling requirements the Agency must follow when disclosing CBI to authorized representatives.

For RMP requirements that might entail divulging CBI, EPA proposed that a source be required to substantiate a CBI claim to EPA at the time that it makes the claim. Under EPA's Part 2 regulations, a source claiming CBI generally is required to substantiate the claim only when EPA needs to make the information public as part of some proceeding (e.g., a rulemaking) or EPA receives a request from the public (e.g., under the Freedom of Information Act (FOIA)) for the information. In view of the public information function of RMPs and the interest already expressed by members of the public in them, EPA proposed "up-front substantiation" of CBI claims to ensure that information not meeting CBI criteria would be made available to the public as soon as possible. This approach of requiring up-front substantiation is the same as that used for trade secret claims filed under the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986.³

³ Section 302 of EPCRA (codified in 40 CFR Part 355) requires any facility having more than a threshold planning quantity of an extremely hazardous substance (EHS) to notify its state emergency response commission (SERC) and local emergency planning committee (LEPC) that the facility is subject to emergency planning. The vast majority of toxic substances listed in 40 CFR Section 68.130 were taken from the EHS list. Section 303 of EPCRA requires LEPCs to prepare an emergency response plan for the community that is under their jurisdiction. Section 303 of EPCRA also requires that facilities subject to section 302 shall provide any information required by their LEPC necessary for developing and implementing the emergency plan. Section 304 of EPCRA requires an immediate notification of a release of an EHS or Hazardous Substances listed in 40 CFR Section 302.4 above a reportable quantity to state and local entities. Section 304 also requires a written follow-up which includes among other things, the chemical name, quantity released and any known or anticipated health risks associated with the

In addition, EPA proposed that any source claiming CBI submit two versions of its RMP: (1) a redacted ("sanitized"), electronic version, which would become part of RMP*Info, and (2) an unsanitized (unredacted) paper copy of the RMP (see proposed section 68.151(c)). The electronic database of RMPs would contain only the redacted version unless and until EPA ruled against all or part of the source's CBI claim, in keeping with the Part 2 procedures. In this way, the public would have access only to the non-CBI elements of sources' RMPs. EPA further stated that state and local agencies could receive the unredacted RMPs by requesting them from EPA under the Part 2 regulations. Those regulations authorize EPA to provide CBI to an agency having implementation responsibilities under the CAA if the agency either demonstrates that it has the authority under state or local law to compel such information directly from the source or that it will "provide adequate protection to the interests of affected businesses" (40 CFR 2.301(h)(3)).

The following sections of this preamble summarize and respond to the comments EPA received on the CBI-related aspects of its proposal. At the outset, however, EPA wants to emphasize that it does not anticipate many CBI claims being made in connection with RMPs. The Agency developed the RMP data elements with the issue of CBI in mind. It sought to define data elements that would provide basic information about a source's risk management program without requiring it to reveal CBI. To have done otherwise would have risked creating RMPs that were largely unavailable to the public. EPA continues to believe that the required RMP data elements will rarely require that a business divulge CBI. The Agency will carefully monitor the CBI claims made. If it appears that the number of claims being made is jeopardizing the public information

release. Sections 311 and 312 of EPCRA (codified in 40 CFR Part 370) require facilities that are subject to OSHA Hazard Communication Standard (HCS), to provide information to its SERC, LEPC and local fire department. This information includes the hazards posed by its chemicals, and inventory information, including average daily amount, maximum quantity and general location. Section 313 of EPCRA (codified in 40 CFR Part 372) requires certain facilities that are in specific industries (including chemical manufacturers) and that manufacture, process, or otherwise use a toxic chemical above specified threshold amounts to report, among other things, the annual quantity of the toxic chemical entering each environmental medium. Most facilities covered by CAA 112(r) are covered by one or more of these sections of EPCRA. Section 322 of EPCRA (codified in Part 350) allows facilities to claim only the chemical identity as trade secret.

objective of the chemical accident prevention program, EPA will consider ways of revising RMPs, including further rulemakings or revising the underlying program, to ensure that important health and safety information is available to the public.

2. RMP Data Elements Found Not CBI

Fifteen commenters representing environmental groups and members of the public opposed allowing some or all RMP data to be claimed as CBI in light of the public's interest in the information RMPs will provide. A number of commenters urged EPA not to allow the following RMP data elements (and supporting documents) to be claimed as CBI:

- Mitigation measures considered by the firm in its offsite consequence analysis,
- Major process hazards identified by the firm,
- Process controls in use,
- Mitigation systems in use,
- Monitoring and detection systems in use, and
- Changes since the last hazard review.

In addition, one commenter contended that even chemical identity and quantity should be ineligible for CBI protection, since the requirement to submit an RMP only applies to facilities using a few well-known, extremely hazardous chemicals, and the public's right to know should always outweigh a company's claim to CBI.

Along the same lines, a number of commenters urged EPA to develop a "corporate sunshine rule" that would allow confidentiality concerns to be overridden if the protected information is needed by the public and experts to understand and assess safety issues. Another commenter recommended that a business claiming a chemical's identity as CBI should be required to provide the generic name of the chemical and information about its adverse health effects so the public can determine the potential risks.

One commenter argued that some of the RMP data that EPA suggested could reveal CBI, (e.g., release rate), were not "emission data," because the worst case scenario data are theoretical estimates, and do not represent any real emissions, past or present.

Representatives of the chemical and petroleum industries disagreed with EPA's proposal to list the data elements that EPA believed could not reveal CBI in any case. These commenters asserted that EPA could not anticipate all the ways in which information required by a data element might reveal CBI, and accordingly urged the Agency to make

case-by-case determinations on CBI claims. They also contended that "emission data" under section 114(c) does not extend to data on possible, as opposed to actual, emissions, and thus that RMP information concerning potential accidental releases would not qualify as "emission data," which must be made available to the public.

As pointed out above, an important purpose of the chemical accident prevention program required by section 112(r) is to inform the public of the risk of accidents in their communities and the methods sources are employing to reduce such risks. EPA therefore believes that as much RMP data as possible should be available to the public as soon as possible. However, section 112(r)(7)(B)(iii) requires that RMPs be made "available to the public under section 114(c)," which provides for protection of trade secret information (other than emission data). Given the statute's direction to protect whatever trade secret information is contained in an RMP, EPA is not authorized to release such information even when the public's need for such information arguably outweighs a business' interest in its confidentiality. The Agency also cannot issue a "corporate sunshine rule" that conflicts with existing law requiring EPA (and other agencies) to protect trade secret information.

As explained above (and in more detail in the proposed rule), EPA examined each RMP data element to determine which would require information that might, depending on a business' circumstances, meet the CBI criteria set forth in EPA's regulations implementing section 114(c) and other information-related legal requirements. The point of this exercise was to both protect potential trade secret information and promote the public information purpose of RMPs by identifying which RMP information might reveal CBI in a particular case and by precluding CBI claims for information that could not reveal CBI in any case. EPA presented the results of its analysis and an explanation of why certain data elements could entail the reporting of CBI depending on a business' circumstances and why others could not. No commenter provided any specific examples or explanations that contradicted the Agency's rationale for its determinations of which data elements could or could not result in reporting of CBI.

However, EPA is deleting from the list of 40 CFR Part 68.151(b)(1) the reference to 40 CFR Part 68.160(b)(9), to allow for the possibility of the number of full-time employees at the stationary source to be claimed as CBI. Upon further

review, EPA was unable to determine that providing the number of employees at the stationary source could never entail divulging information that could meet the test for CBI set forth in the Agency's comprehensive CBI regulations at 40 CFR Part 2. Therefore, EPA has removed this element from the list of data elements that can not be claimed CBI in Part 68. With this exception, EPA is promulgating the list of RMP data elements for which CBI claims are precluded, as proposed (Section 68.151(b)).

EPA's justifications for its specific CBI findings appear in an appendix to this preamble. A more detailed analysis of all RMP data elements and CBI determinations is available in the docket (see ADDRESSES). The Agency continues to find no reasonable basis for anticipating that the listed elements will in any case require a business to reveal CBI that is not "emission data." The information required by each of the listed data elements either fails to meet the criteria for CBI set forth in EPA's CBI regulations at Part 2 or meets the Part 2 definition of "emission data." In many cases, the information is available to the public through other reports filed with EPA, states, or local agencies (e.g., reports required by Emergency Planning and Community Right-to-Know Act (EPCRA) sections 312 and 313 provide general facility identification information and reports of most accidental releases are available through several Federal databases including EPA's Emergency Release Notification System and Accidental Release Information Program databases).

In order to preclude CBI claims for other data elements, the Agency would have to show that the information required by a data element either was "emission data" under section 114(c) or could not, under any circumstances, reveal CBI. As explained below, EPA does not believe such a showing can be made for any of the data elements not on the list. Therefore, CBI claims made for information required by data elements not on the list will be evaluated on a case-by-case basis according to the procedures contained in 40 CFR Part 2 (except that substantiation will have to accompany the claims, as discussed below).

The Agency agrees with the commenters who argued that information about potential accidental releases is not "emission data" under section 114(c). EPA's existing policy statement (see 56 FR 7042, Feb. 21, 1991) on what information may be considered "emission data" was developed to implement sections 110 and 114(a) of the CAA, which the Agency generally invokes when it seeks

to gather technical data from a source about its actual emissions to the air. While the policy is not explicitly limited in its scope, EPA believes it would be inappropriate to apply it to RMP data elements concerning hypothetical, as opposed to actual, releases to the air. Under the definition of "emission data" contained in Part 2, information is "emission data" if it is (1) "necessary to determine the identity, amount, frequency, concentration, or other characteristics * * * of any emission *which has been emitted* by the source," (2) "necessary to determine the identity, amount, frequency, concentration, or other characteristics * * * of the emissions which, under an applicable standard or limitation, the source *was authorized to emit*," or (3) general facility identification information regarding the source which distinguishes it from other sources (40 CFR section 2.301(a)(2)(i) (emphasis added)). Under these criteria, EPA has concluded that only the RMP data elements relating to source-level registration information (sections 68.160(b)(1)–(6), (8)–(13)) and the five-year accident history (section 68.168) are "emission data." Of the RMP data elements, only the five-year accident history involves actual, past emissions to the environment; the other data elements would not, therefore, qualify as "emission data" under the first prong of the Part 2 definition. Moreover, the data elements relating to a source's offsite consequence analysis, prevention program and emergency response program do not attempt to identify or otherwise reflect "authorized" emissions; the data elements instead reflect the source's *potential* for accidental releases. Accordingly, these data elements would not be "emission data" under the second prong of the definition. As for the third prong, some of the source-level data are "emission data" because they help identify a source. Most other RMP data elements are reported on a process level and are not generally used to distinguish one source from another.

The Agency believes it is unable to show that the remaining data elements could not, under any circumstances, reveal CBI. EPA continues to believe that it is theoretically possible for the remaining data elements (the elements not listed in section 68.151(b)) to reveal CBI either directly or through reverse engineering, depending on the circumstances of a particular case. At the same time, EPA believes that, in practice, the remaining data elements will rarely reveal CBI. The purpose of

the data in the RMP is for a source to articulate its hazards, and the steps it takes to prevent accidental releases. In general, the kinds of information specifying the source's hazards and risk management program are not likely to be competitively sensitive.

In particular, covered processes at the vast majority of stationary sources subject to the RMP rule are too common and well-known to support a CBI claim for information related to such processes. For example, covered public drinking water and wastewater treatment plants generally use common regulated substances in standard processes (i.e., chlorine used for disinfection). Also, covered processes at many sources involve the storage of regulated substances that the sources sell (e.g., propane, ammonia), so the processes are already public knowledge. Other covered processes involve the use of well-known combinations of regulated substances such as refrigerants. RMP information regarding these types of processes should not include CBI.

Even in the case of unusual or unique processes, it is generally unlikely that RMP information could be used to reveal CBI through reverse engineering. To begin with, required RMP information is general enough that it is unlikely to provide a basis for reverse engineering a process. For example, a source must report in its RMP whether overpressurization is a hazard and whether relief valves are used to control pressure, but it is not required to report information on actual pressures used, flow rates, chemical composition, or the configuration of equipment. Moreover, while RMP information may provide some data that could be used in an attempt to discover CBI information through reverse engineering, it typically will not provide enough data for such an attempt to succeed, because the source is not required to provide a detailed description of the chemistry or production volume of the process. Businesses claiming CBI based on the threat of reverse engineering will be required to show how reverse engineering could in fact succeed with the information that the RMP would otherwise make public, together with other publicly available information. A business unable to do so will have its claim denied.

While EPA is requiring that a source claiming a chemical's identity as CBI provide the generic category or class name of the chemical, the RMP does not require sources to provide information about the adverse health effects of the chemical. Chemicals were included in the section 112(r) program because they

are acutely toxic or flammable; health effects related to chronic exposure were not considered because they are addressed by other rules (see List Rule at 59 FR 4481). EPA believes that generic names are sufficient to indicate the general health concerns from short-term exposures. Should a member of the public desire more information, EPA encourages the use of EPCRA section 322(h), which provides a means for the public to obtain information about the adverse health effects of a chemical covered by that statute, where the chemical's identity has been claimed a trade secret. The public will find this provision of EPCRA useful because most sources subject to the RMP rule are also subject to EPCRA.

3. Up-front Substantiation of CBI Claims

One commenter supported the proposal to require CBI claims to be substantiated at the time they are made. Another commenter stated that there is no compelling need to require up-front substantiation. The commenter stated that up-front substantiation would place a sizable burden on both industry and EPA and would be in direct conflict with the Paperwork Reduction Act. The commenter claimed that, with the exception of EPCRA, where a submitter is allowed to claim only one data element—chemical identity—as CBI, it is EPA's standard procedure not to require submitters to provide written substantiation unless a record has been requested. Further, the commenter stated that the Agency has not shown any reason for departing from that procedure in this rule.

EPA believes that requiring up-front substantiation of CBI claims made for RMP data has ample precedent, is fully consistent with the Agency's CBI regulations and the Paperwork Reduction Act, and is critical to achieving the public information purposes of the accident prevention program. EPCRA is not the only example of an up-front substantiation requirement. The Agency has also required up-front substantiation in several other regulatory contexts, including those where, like here, providing the public with health and safety information is an important objective [see e.g., 40 CFR section 725.94, 40 CFR section 710.38, and 40 CFR section 720.85 (regulations promulgated under Toxic Substances Control Act)].

Even under its general CBI regulations, the Agency need not wait for a request to release data to require businesses to substantiate their CBI claims. When EPA expects to get a request to release data claimed

confidential, the Agency is to initiate "at the earliest practicable time" the regulations' procedures for making CBI determinations (40 CFR section 2.204(a)(3)). Those procedures include calling on affected businesses to substantiate their claims (see 40 CFR section 2.204(e)). Since state and local agencies, environmental groups, academics and others have already indicated their interest in obtaining complete RMP data (see comments received on this rulemaking, available in the DOCKET), EPA fully expects to get requests for RMP data claimed CBI. Consequently, even if EPA did not establish an up-front substantiation requirement in this rule, under the Agency's general CBI regulations it could require businesses claiming CBI for RMP data to substantiate their claims without first receiving a request to release the data. Establishing an up-front requirement in this rule will simply allow EPA to obtain substantiation of CBI claims without having to request it in every instance.

Requiring up-front substantiation for RMP CBI claims is consistent with the Paperwork Reduction Act. Any burden posed by this requirement has already been evaluated as part of the Information Collection Request (ICR) associated with this rulemaking. EPA disagrees that up-front substantiation will impose a substantial or undue burden. As noted above, under EPA's current CBI regulations, a source claiming CBI could and probably would be required to provide substantiation for its claim, in view of the public interest in RMP information. A requirement to submit substantiation with the claim should thus make little difference to the source. Moreover, a source presumably does not make any claim of CBI lightly. Before filing a CBI claim, the source must first determine whether the claim meets the criteria specified in 40 CFR section 2.208. Up-front substantiation only requires that the source document that determination at the time it files its claim. Since it would be sensible for a source to document the basis of its CBI claim for its own purposes (e.g., in the case of a request for substantiation), EPA expects that many sources already prepare documentation for their CBI claims by the time they file them. Also, submitting substantiation at the time of claim reduces any additional burden later, such as reviewing the Agency's request, retrieving the relevant information, etc. Therefore, providing documentation at the time of filing should impose no additional burden.

In view of the public information function of RMPs, EPA believes that up-front substantiation is clearly warranted

for CBI claims made for RMP data. Up-front substantiation will ensure that sources filing claims have carefully considered whether the data they seek to protect in fact meets the criteria for protection. Given the public interest already expressed in RMP data, EPA expects that CBI claims for RMP data will have to be substantiated at some point. Up-front substantiation will save EPA and the public time and resources that would otherwise be required to respond to each CBI claim with a request for substantiation. EPA is therefore promulgating the up-front substantiation requirement as proposed.

4. State and Local Agency Access to Unredacted RMPs

One commenter objected to EPA's statement in the proposal that it would provide unredacted (unsanitized) versions of the RMPs to a state and local agency only upon meeting the criteria required by the EPA's CBI rules at 40 CFR Part 2.⁴ The commenter, an association of fire fighters, argued that the Agency's position was inconsistent with CAA section 112(r)(7)(B)(iii), which provides that RMPs "shall . . . be submitted to the Chemical Safety and Hazard Investigation Board [a federal agency], to the State in which the stationary source is located, and to any local agency or entity having responsibility for planning for or responding to accidental releases which may occur at such source" The commenter claimed that this provision entitles the specified entities, including local fire departments, to receive unredacted RMPs without having to make the showings required by EPA's CBI regulations.

EPA is not resolving this issue today. The Agency has reviewed the relevant statutory text and legislative history, as well as analogous provisions of EPCRA, and believes that arguments can be made on both sides of this issue. While section 112(r)(7)(B)(iii) calls for RMPs to be submitted to states, local entities and the Board, it is not clear that Congress intended CBI contained in RMPs to be provided to those entities without ensuring appropriate protection of CBI.

At stake in resolving this issue are two important interests—local responders' interest in unrestricted access to information that may be critical to their safety and effectiveness in responding to emergencies and businesses' interest in protecting sensitive information from their competitors. Before making a final decision on this issue, EPA believes it would benefit from further public input. Because EPA stated that it would not provide unredacted RMPs to states and local agencies, those interested in protecting CBI may not have considered it necessary to lay out the legal and policy arguments supporting their views. State and local agencies, many of which in the past have expressed concern about the potential administrative burden of receiving RMPs directly from sources, also did not comment on the issue. EPA has therefore decided to accept additional comments on this issue alone. (Additional comments on any other issues addressed in this rulemaking will not be considered or addressed, since the Agency is taking final action on them here.) Comments should be mailed to the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. In the meantime, unredacted RMPs will be available to states, local agencies and the Board under the terms of the Agency's existing CBI regulations at 40 CFR section 2.301(h)(3) (for state and local agencies) and 40 CFR section 2.209(c) (for the Board).

Section 112(r)(7)(B)(iii) states in relevant part:

[RMPs] shall also be submitted to the Chemical Safety and Hazard Investigation Board, to the State in which the stationary source is located, and to any local agency or entity having responsibility for planning for or responding to accidental releases which may occur at such source, and shall be available to the public under section 114(c) of [the Act].

Section 114(c) provides for the public availability of any information obtained by EPA under the Clean Air Act, except for information (other than emissions data) that would divulge trade secrets.

From a public policy perspective, there are some obvious advantages to reading section 112(r)(7)(B)(iii) in the way the commenter suggests. Local fire departments and other local responders are typically the first to arrive at the scene of chemical accidents in their jurisdictions. RMP information that first responders could find helpful include chemical identity, chemical quantity, and potential source of an accident. Under EPA's regulations, however, any or all of this information could be claimed CBI. In addition, state and local authorities are often in the best position

to assess the adequacy of a source's risk management program and to initiate a dialogue with the facility should its RMP indicate a need for improvement. However, state and local authorities' ability to provide this contribution to community safety would be impeded to the extent a source claimed key information as CBI. While states and local agencies may obtain information claimed CBI under EPA's CBI regulations (assuming they can make the requisite showing), the time required to obtain the necessary authority or findings from state or local and EPA officials could be substantial.

At the same time, there are also public policy reasons for ensuring protection of CBI contained in RMPs. Congress has in many statutes, including the CAA and EPCRA, provided for the protection of trade secrets to safeguard the competitive position of private businesses. Businesses' ability to maintain the confidentiality of trade secrets helps ensure competition in the U.S. economy and U.S. businesses' competitive position in the world economy. Protection of trade secrets also encourages innovation, which is an important contributor to economic growth.

A reading of section 112(r)(7)(B)(iii) that demands submission of unredacted RMPs to states, local entities, and the Board may lead to widespread public access to information claimed CBI. For purposes of section 112(r)(7)(B)(iii), "any local agency or entity having responsibility for planning for or responding to accidental releases" includes local emergency planning committees (LEPCs) established under EPCRA. Section 301(c) of EPCRA provides that LEPCs must include representatives from both the public and private sectors, including the media and facilities subject to EPCRA requirements. Submission of an unredacted RMP to an LEPC would thus entail release of CBI to some members of the public and potentially even competitors.⁵ More generally, local agencies may not be subject to any legal requirement to protect CBI and may lack the knowledge and resources to address CBI claims. Arguably, it would be

⁴ Section 2.301(h)(3) provides that a State or local government may obtain CBI from EPA under two circumstances: (1) it provides EPA a written opinion from its chief legal officer or counsel stating that the State or local agency has the authority under applicable State or local law to compel the business to disclose the information directly; or (2) the businesses whose information is disclosed are informed and the State or local government has shown to a EPA legal office's satisfaction that its disclosure of the information will be governed by State or local law and by "procedures which will provide adequate protection to the interests of affected businesses."

⁵ EPA does not believe that submission of an RMP containing CBI to the statutorily specified entities would defeat a source's ability to claim information as CBI for purposes of section 114(c) and EPA's CBI regulations. Under those regulations, information that has been released to the public cannot be claimed CBI. Release of a RMP containing CBI to the entities specified by section 112(r)(7)(B)(iii), including LEPCs, would not constitute such a release. EPCRA similarly provides that disclosure of trade secret information to an LEPC does not prevent a facility from claiming the information confidential (see EPCRA section 322(b)(1)).

anomalous for Congress to require EPA to protect trade secrets contained in RMPs against release to the public only to risk divulging the same information by requiring submission of unredacted RMPs to a broad range of entities that may not have the need or capacity to protect CBI themselves. It would also appear inconsistent with the approach Congress took to protecting trade secrets in EPCRA, where Congress did not provide for release of trade secret chemical identity information to local agencies.

Relatedly, many state and local agencies objected to EPA's original proposal in the RMP proposed rulemaking (58 FR 54190, October 20, 1993) that sources submit RMPs directly to States, local agencies, and the Board, as well as EPA. They noted that managing the information contained in RMPs would be difficult without a significant expenditure of typically scarce resources. Many states and local agencies thus supported EPA's final decision to develop an electronic submission and distribution system that would allow covered sources to submit their RMPs to EPA, which would make them available to states, local agencies, and the Board, as well as the general public. If the statute is read to require submission of RMP information to state and local agencies, and the Board, to the extent it is claimed as CBI, the resource concerns raised by State and local agencies commenters likely would be raised to that extent again.

EPA also questions the extent to which states, local entities and the Board would be disadvantaged if they did not receive unredacted RMPs without making the showings required by EPA's CBI regulations. As noted earlier, EPA expects that relatively little RMP information will be CBI. RMP data will only rarely contain CBI, and the up-front substantiation will minimize the number of CBI claims it receives by ensuring that sources carefully examine the basis for any claims before submitting them. Consequently, the Agency believes that a state or local agency will rarely confront a redacted RMP.

Moreover, EPCRA provides state and local entities, including fire departments, with access to much of the pertinent data already. EPA's regulations under EPCRA cover a universe of sources and chemicals that includes most, if not all, the sources and substances covered by the RMP rule. The EPCRA regulations require reporting of some of the same information required by the RMP rule, including chemical identity. EPCRA withholds from public release only

chemical identities that are trade secrets and the location of specific chemicals where a facility so requests. In practice, relatively few facilities have requested trade secret protection for a chemical's identity.

Additionally, EPCRA section 312(f) empowers local fire departments to conduct on-site inspections at facilities subject to EPCRA section 312(a) and obtain information on chemical location. Most facilities subject to EPCRA section 312(a) are also subject to the RMP rule. On-site inspections could also provide information on hazards and mitigation measures. In addition, EPCRA section 303(d)(3) authorizes LEPCs, which include representatives of fire departments, to request from facilities covered by EPCRA section 302(b) such information as may be necessary to prepare an emergency response plan and to include such information in the plan as appropriate. Some sources subject to the RMP rule are also covered by EPCRA section 302(b).

In light of the points made above, EPA questions whether section 112(r)(7)(B)(iii) should be interpreted to require submission of unredacted RMPs containing CBI to the statutorily specified entities without provision being made for protecting CBI. EPA invites the public to provide any additional comment or information relevant to interpreting the submission requirement of section 112(r)(7)(B)(iii).

5. Other CBI Issues

Two commenters disagreed with EPA's statement that a source cannot make a CBI claim for information available to the public under EPCRA or another statute. They claimed that a request for information under EPCRA cannot supersede the CBI provisions applicable to data collected under the authorities of the CAA or Toxic Substances Control Act or any other regulatory program.

EPA does not agree with this comment. Claims of CBI may not be upheld if the information is properly obtainable or made public under other statutes or authorities. For example, chemical quantity on site is available to the public under EPCRA Tier II reporting. In addition, under EPCRA section 303(d)(3), LEPCs have the authority to request any information they need to develop and implement community emergency response plans. If information obtained through such a request is included in the community plan, it will become available to the public under EPCRA section 324. Information obtainable or made public under EPCRA would not be eligible for

CBI protection under 40 CFR section 2.208, which specifically excludes from CBI protection information already available to the public. Filing a CBI claim under the CAA or another statute does not protect information if it is legitimately requested and made public under other federal, state, or local law. Information obtainable or made public (through proper means) under existing statutes cannot be CBI under EPA's CBI regulations.

6. Actions Taken

In summary, the Agency is adding two sections (68.151 and 68.152) to Part 68. Section 68.151 sets forth the procedures for a source to follow when asserting a CBI claim and lists data elements that can not be claimed as CBI. This section also requires sources filing CBI claims to provide the information claimed confidential, in a format to be specified by EPA, instead of the unsanitized paper copy of the RMP as discussed in the proposal. Section 68.152 sets forth the procedures for substantiating CBI claims. Sources claiming CBI are required to submit their substantiation of their claims at the same time they submit their RMPs.

E. Other Issues

Two commenters asked why EPA had proposed to drop the phrase "if used" in section 68.165(b)(3) where the rule asks for the basis of the offsite consequence analysis results. EPA has decided to retain the language, since sources will have a choice of using either EPA's RMP guidance documents or a model. Where a model is used, the source will have to provide the name of the model. These commenters also asked why EPA proposed to drop (alternative releases only) from section 68.165(b)(13). EPA has also decided to retain the parenthetical language.

One commenter stated that EPA should allow sources to submit RMPs either electronically or in hard copy. The commenter stated that not allowing hard copy submissions will be burdensome on many sources who have never filed an electronic report to the government before. As stated in the April proposal, EPA is allowing sources to submit RMPs on paper. Paper submitters are asked to fill out a simple paper form to tell EPA why they are unable to file electronically.

Two commenters objected to placing offsite consequence analysis (OCA) data, particularly worst-case release scenarios, on the Internet, for security reasons. Issues related to public access to OCA data are beyond the scope of this rulemaking, as this action is limited to the issues discussed above. It does

not include decisions regarding how the public will access the OCA data elements of the RMPs. Statements in the preamble about EPA providing public access to RMP data are not intended to address which portions of the RMP data will be electronically available.

A number of commenters were concerned about a statement EPA made in the preamble to the proposed rule regarding the definition of "process", and stated that EPA's interpretation of "process" is not consistent with the interpretation the Occupational Safety and Health Administration (OSHA) uses in its process safety management (PSM) standard (29 CFR 1910.119). In this rulemaking, EPA did not propose any changes to the definition of process nor is it adopting any changes to the definition. As EPA stated in the preamble to the final RMP rule, it will interpret "process" consistently with OSHA's interpretation of that term (29 CFR 1910.119). Therefore, if a source is subject to the PSM rule, the limits of its process(es) for purposes of OSHA PSM will be the limits of its process(es) for purposes of RMP (except in cases involving atmospheric storage tanks containing flammable regulated substances, which are exempt from PSM but not RMP). If a source is not covered by OSHA PSM and is complicated from an engineering perspective, it should consider contacting its implementing agency for advice on determining process boundaries. EPA and OSHA are coordinating the agencies' approach to common issues, such as the interpretation of "process".

F. Technical Corrections

When Part 68 was promulgated, the text of section 68.79(a), was drawn from the OSHA PSM standard, but it was not revised to reflect the different structure of EPA's rule. The OSHA PSM standard is contained in a single section; EPA's Program 3 prevention program is contained in a subpart. Rather than referencing "this section," the paragraph should have referenced the "subpart." Therefore, as proposed, EPA is changing "section" to "subpart" in section 68.79(a).

Under section 68.180(b), EPA intended that all covered sources report the name and telephone number of the agency with which they coordinate emergency response activities, even if the source is not required to have an emergency response plan. However, the rule refers only to coordinating the emergency plan. In this action, EPA is revising this section to refer to the local agency with which emergency response activities and the emergency response plan is coordinated.

IV. Section-by-Section Discussion of the Final Rule

In Section 68.3, Definitions, the definition of SIC is removed and replaced by the definition of NAICS.

Section 68.10, Applicability, is revised to replace the SIC codes with NAICS codes, as discussed above.

Section 68.42, Five-Year Accident History, is revised to require the percentage concentration by weight of regulated toxic substances released in a liquid mixture and the five- or six-digit NAICS code that most closely corresponds to the process that had the release. The phrase "five- or six-digit" has been added before the NAICS code to clarify the level of detail required for NAICS code reporting.

Section 68.79, Compliance Audits, the word "section" in paragraph (a) is replaced by "subpart."

Section 68.150, Submission, is revised by adding a paragraph to state that procedures for asserting CBI claims and determining the sufficiency of such claims are provided in new Sections 68.151 and 68.152.

Section 68.151 is added to set forth the procedures to assert a CBI claim and list data elements that may not be claimed as CBI, as discussed above.

Section 68.152 is added to set forth procedures for substantiating CBI claims, as proposed.

Section 68.160, Registration, is revised by adding the requirements to report the method and description of latitude and longitude, replacing SIC codes with five- or six-digit NAICS codes, and adding the requirement to report Title V permit number, when applicable. This section is also revised to include optional data elements. The phrase "five- or six-digit" has been added before NAICS code to clarify the level of detail required for NAICS code reporting.

Section 68.165, Offsite Consequence Analysis, is revised by adding the requirement that the percentage weight of a regulated toxic substance in a liquid mixture be reported.

Section 68.170, Prevention Program/Program 2, is revised to replace SIC codes with five- or six-digit NAICS codes, as is Section 68.175.

Section 68.180, Emergency Response Program, is revised to clarify that paragraph (b) covers both the coordination of response activities and plans, as proposed.

V. Judicial Review

The proposed rule amending the accidental release prevention requirements; under section 112(r)(7) was proposed in the **Federal Register** on

April 17, 1998. This **Federal Register** action announces EPA's final decision on the amendments. Under section 307(b)(1) of the CAA, judicial review of this action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before March 8, 1999. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's action may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

VI. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file, because it allows members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.)

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under Docket No. A-98-08 (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in **ADDRESSES** at the beginning of this document.

B. Executive Order 12866

Under Executive Order (E.O.) 12866, [58 FR 51,735 (October 4, 1993)], the Agency must determine whether the regulatory action is "significant", and therefore subject to OMB review and the requirements of the E.O. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal government or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

C. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input to the development of regulatory proposals containing significant unfunded mandates."

EPA has concluded that this rule may create a nominal mandate on State, local or tribal governments and that the Federal government will not provide the funds necessary to pay the direct costs incurred by these governments in complying with the mandate. Specifically, some public entities may be covered sources and will have to add the new data elements to their RMP. In developing this rule, EPA consulted with state, local and tribal governments to enable them to provide meaningful and timely input in the development of this rule. Even though this rule revises Part 68 in a way that does not significantly change the burden imposed by the underlying rule, EPA

has taken efforts to involve state and local entities in this regulatory effort. Specifically, much of the rule responds to issues raised by the Electronic Submission Workgroup discussed above, which includes State and local government stakeholders. In addition, EPA has recently conducted seminars with tribal governments; however, there were no concerns raised on any issues that are covered in this rule. EPA discussed the need for issuing this regulation in sections II and III in this preamble. Also, EPA provided OMB with copies of the comments to the proposed rule.

D. Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the E.O. 13045 because it is not "economically significant" as defined in E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

E. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of

Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Two of the amendments made by this rule, the addition of RMP data elements and the conversion of SIC codes to NAICS codes, impose only minimal burden on any sources that may be owned or operated by tribal governments, such as drinking water and waste water treatment systems. The third amendment made by this rule addresses the procedures for submission of confidential business information in the RMP. The sources that are mentioned above handle chemicals that are known to public (e.g., chlorine for use of disinfection, propane used for fuel, etc.). EPA does not, therefore, expect RMP information on these types of processes to include CBI, so any costs related to CBI will not fall on Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

Notwithstanding the non-applicability of E. O. 13084, EPA has recently conducted seminars with the tribal governments. However, there were no concerns raised on any issues that are covered in this rule.

F. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this action will not have a significant economic impact on a substantial number of small entities. Two of the amendments made by this rule, the addition of RMP data elements and the conversion of SIC codes to NAICS codes, impose only minimal burden on small entities. Moreover, those small businesses that claim CBI when submitting the RMP will not face any costs beyond those imposed by the existing CBI regulations. Even considering the costs of CBI substantiation, however, there is no significant economic impact on a substantial number of small entities. EPA estimates that very few small entities (approximately 500) will claim CBI and that these few entities represent a small fraction of the small entities (less than 5 percent) affected by the RMP rule. Finally, EPA estimates that those small businesses filing CBI will experience a cost which is significantly less than one percent of their annual sales. For a more detailed analysis of the

small entity impacts of CBI submission, see Document Number, IV-B-02, available in the docket for this rulemaking (see ADDRESSES section).

G. Paperwork Reduction

1. General

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1656.05) and a copy may be obtained from Sandy Farmer, by mail at Office of Policy, Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M St, SW, Washington, DC 20460, by e-mail at farmer.sandy@epamail.epa.gov or by calling (202) 260-2740. A copy may also be downloaded off the Internet at <http://www.epa.gov/icr>. The information requirements are not effective until OMB approves them.

The submission of the RMP is mandated by section 112(r)(7) of the CAA and demonstrates compliance with Part 68 consistent with section 114(c) of the CAA. The information collected also will be made available to state and local governments and the public to enhance their preparedness, response, and prevention activities. Certain information in the RMP may be claimed as confidential business information under 40 CFR Part 2 and Part 68.

This rule will impose very little burden on affected sources. First, EPA estimates that the new data elements will require only a nominal burden, .25 hours for a typical source, because latitude and longitude method and description will be selected from a list of options, the Title V permit number is available to any source to which Title V applies, and the percentage weight of a toxic substance in a liquid mixture is usually provided by the supplier of the mixture. Second, the NAICS code provision is simply a change from one code to another.⁶ Third, as discussed above in the preamble, EPA believes that the CBI provisions of this rule will add no additional burden beyond what sources otherwise would face in

complying with the CBI rules in 40 CFR Part 2. The Agency has calculated the burden of substantiations made for purposes of this rule below.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and system for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

2. CBI Burden

In the Notice of Proposed Rulemaking for these amendments, EPA proposed to amend existing 40 CFR Part 68 to add two sections which would clarify the procedures for submitting RMPs that contain confidential business information (CBI). As proposed, CBI would be handled in much the same way as it presently is under other EPA programs, except that EPA would require sources claiming CBI to submit documentation substantiating their CBI claims at the time such claims were made and EPA also would not permit CBI claims for certain data elements which clearly are not CBI. Aside from these procedural changes, however, the proposed rule was substantively identical to the existing rules governing the substantiation of CBI claims, presently codified in 40 CFR Part 2.

At the time it proposed these amendments, EPA estimated the public reporting burden for CBI claims to be 15 hours for chemical manufacturers with Program 3 processes, the only kinds of facilities that EPA expects to be able to claim CBI for any RMP data elements. This estimate was premised upon EPA's assessment that it would require 8.5 hours per claim to develop and submit the CBI substantiation and 6.5 hours to complete an unsanitized version of the RMP, for a total of 15 hours. EPA also estimated that approximately 20 percent

of the 4000 chemical manufacturers (out of 64,200 stationary sources estimated to be covered by the RMP rule) may file CBI claims (800 sources). The 800 sources represent a conservative projection based on the Agency's experience under EPCRA program. Consequently, the total annual public reporting burden for filing CBI claims was estimated to be approximately 12,000 hours over three years (800 facilities multiplied by an average burden of 15 hours), or an annual burden of 4,000 hours (Information Collection Request No. 1656.04).

a. Comment received. EPA received one comment on the ICR developed for the proposed rule, opposing up-front substantiation of any CBI claims. The commenter stated that "[t]his is a major departure from standard EPA procedure, and would impose a substantial and unjustified burden for several years." The commenter further added that up-front substantiation would significantly increase the burden of this rule, and that up-front substantiation unnecessarily increases the volume and potential loss of CBI documents. The commenter also stated that the estimate of 15 hours for chemical manufacturers "seems unreasonably low," and cited the EPA burden estimate of 27.7 to 33.2 hours per claim (with an average of 28.8) under the trade secret provisions of EPCRA.

In the preamble to the proposed rule, EPA estimated that 20 percent of the 4,000 chemical manufacturers will file a CBI claim. The commenter contends that "[t]he EPA analysis * * * excludes facilities in other industries that will need to file CBI claims."

Finally, the commenter stated that claiming multiple data elements as CBI will increase reporting burden.

b. EPA response. Burden Estimates: EPA disagrees with these comments. As pointed out above, the requirement to submit up-front substantiation of CBI claims imposes no additional burden. In addition, the total burden of the CBI provisions of this rule are not understated. EPA has re-examined its analysis in light of the commenter's concerns and has determined—contrary to the commenter's claim—that its initial estimate of the total burden associated with preparing and claiming CBI was likely too conservative. As explained below, the Agency's best available information indicates that the process of documenting and submitting a claim of CBI should impose a burden of approximately 9.5 hours per CBI claimant.

First, EPA believes that the requirement to submit, at the time a source claims information as CBI,

⁶ EPA intends to provide several outreach mechanisms to assist sources in identifying their new NAICS code. RMP*Submit will provide a "pick list" that will make it easier for sources to find the appropriate code. Also, selected NAICS codes are included in the General Guidance for Risk Management Programs (July 1998) and in the industry-specific guidance documents that EPA is developing. EPA will also utilize the Emergency Planning and Community Right-to-Know Hotline at 800-424-9346 (or 703-412-9810) to assist sources in determining the source's NAICS codes.

substantiation demonstrating that the material truly is CBI imposes no burden on sources beyond that which presently exists under EPA's CBI regulations in Part 2. In order to decide whether they might properly claim CBI for a given piece of information, a source must determine if the criteria stated in section 2.208 of 40 CFR Part 2 are satisfied. Naturally, a source goes through this process before a CBI claim is made. EPA agrees that most programs do not require the information that forms the basis for the substantiation to be submitted at the time of the claim; however, a facility must still determine whether or not a claim can be substantiated. Because existing rules require sources to formulate a legitimate basis for claiming CBI, even if those rules do not require immediate documentation, and because the Agency fully expects requests for RMP information which will necessitate sources' submitting such documentation, EPA believes that up-front submission will not increase the burden of the regulation.

Second, in response to the commenter's claim that the Agency had underestimated the total burden associated with CBI claims, EPA undertook a review of recent information collection requests (ICRs) covering data similar to that required to be submitted in an RMP. Initially, EPA examined the ICR prepared for Part 2 itself (ICR No. 1665.02, OMB Control No. 2020-0003). Under an analysis contained in the Statement of Support for the ICR, the Agency estimated that it takes approximately 9.4 hours to substantiate claims of CBI, prepare documentation, and submit such documentation to EPA. Next, the Agency reviewed a survey conducted by the Agency (under Office of Management and Budget clearance #2070-0034), to present the average burden associated with indicating confidential business information claims for certain data elements under the proposed inventory update rule (IUR) amendment under TSCA section 8. This survey specifically asked affected industry how long it would take to prepare CBI claims for two data elements—chemical identity and production volume range information. Part 68 also requires similar information (e.g., chemical identity and maximum quantity in a process) to be included in a source's RMP and, indeed, EPA anticipates that they will be the data elements most likely to be claimed CBI. The average burden estimates for chemical identity were between 1.82 and 3.13 hours, and the average burden

estimates for production volume in ranges were between 0.87 and 2.08 hours. Thus, assuming that the average source claims both chemical identity and the maximum quantity in a process as CBI, a conservative estimate for the reporting burden would be 5.21 hours. Finally, EPA examined the burden estimate upon which it relied at proposal. That estimate predicted that the average CBI claim would take 15 hours, of which 8.5 would be developing and submitting the CBI claim, and 6.5 would be completing an unsanitized version of the RMP. In view of EPA's current plan not to require a source claiming CBI to submit a full, unsanitized RMP, but instead to submit only the particular elements claimed as CBI, the Agency expects the latter burden to decrease to 1 hour, for a total burden of 9.5 hours.

In light of its extensive research of the burden hours involved in preparing and submitting CBI claims, EPA believes that the total burden estimate was not understated in the April proposal. Rather, other ICRs and the ICR proposal, combined with the changes to the method of documenting CBI claims, indicate that a burden estimate between 5.21 and 9.5 hours is appropriate for this final rule. EPA has selected the most conservative of these, 9.5 hours, in its ICR for this final rule.

EPA rejected one ICR's burden estimate as being inapplicable to the present rulemaking. Although the commenter urged the Agency to adopt the estimate associated with trade secret claims under EPCRA (28 hours), EPA believes that the estimates discussed above are more accurate for several reasons. First, the EPCRA figures are based upon a survey with a very small sample size, as compared to the TSCA survey cited previously. Second, most (if not all) of the facilities submitting RMPs are likely to already be reporting under sections 311 and 312 or section 313 of EPCRA, and many of the manufacturers submitting an RMP are subject to TSCA reporting requirements; thus, most sources likely to claim CBI for an RMP data element will have already done some analysis of whether or not such information would reveal legitimately confidential matter.

Other Facilities Can Claim CBI: The Agency does not agree with the commenter's claim that facilities other than chemical manufacturers might be expected to claim CBI for information contained in their RMPs. The other industries affected by the RMP rule (e.g., propane retailers, publicly owned treatment works) will not be disclosing in the RMP information that is likely to cause substantial harm to the business's

competitive position. For example, covered public drinking water and wastewater treatment plants generally use common regulated substances in standard processes (i.e., chlorine used for disinfection). Also, covered processes at many sources involve the storage of regulated substances that the sources sell (e.g., propane, ammonia), so the processes are already public knowledge. Other covered processes involve the use of well-known combinations of regulated substances such as refrigerants. Therefore, it is not likely that these businesses would claim information as CBI.

As a point of comparison, EPA notes that of the 869,000 facilities that are estimated to be required to report under sections 311 and 312 of EPCRA, approximately 58 facilities have submitted trade secret claims for under those sections. For this reason, EPA believes the estimate of 800 sources may, in fact, be an overestimate of the number of sources claiming CBI.

Reporting Multiple Data Elements: The Agency disagrees with the commenters' assertion that it has underestimated the reporting burden on sources' claiming multiple data elements as CBI. The burden figures stated above are based on the Agency's estimates of the average number of data elements that a typical source will likely claim CBI.

Public reporting of the new RMP data elements is estimated to require an average of .25 hours for all sources (64,200 sources) and substantiating CBI claims is estimated to take approximately 9.5 hours for certain chemical manufacturing sources (800 sources). The aggregate increase in burden over that estimated in the previous Information Collection Request (ICR) for part 68 is estimated to be about 23,650 hours over three years, or an annual burden of 7,883 hours for the three years covered by the ICR.

H. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205

of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for state, local, and

tribal governments, in the aggregate, or the private sector in any one year. The EPA has determined that the total nationwide capital cost for these rule amendments is zero and the annual nationwide cost for these amendments is less than \$1 million. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Act.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments are unlikely to claim information confidential, because sources owned or operated by these entities (e.g., drinking water and waste water treatment systems), handle chemicals that are known to public. The new data elements and the conversion of SIC codes to NAICS codes impose only minimal burden on these entities.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub L. 104-113, section 12(d)(15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g.,

materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective February 5, 1999.

APPENDIX TO PREAMBLE—DATA ELEMENTS THAT MAY NOT BE CLAIMED AS CBI

Rule element	Comment
68.160(b)(1) Stationary source name, street, city, county, state, zip code, latitude, and longitude, method for obtaining latitude and longitude, and description of location that latitude and longitude represent.	This information is filed with EPA and other agencies under other regulations and is made available to the public and, therefore, does not meet the criteria for CBI claims. It is also available in business and other directories.
68.160(b)(2) Stationary source Dun and Bradstreet number.	
68.160(b)(3) Name and Dun and Bradstreet number of the corporate parent company.	
68.160(b)(4) The name, telephone number, and mailing address of the owner/operator.	
68.160(b)(5) The name and title of the person or position with overall responsibility for RMP elements and implementation.	This information provides no information that would affect a source's competitive position.
68.160(b)(6) The name, title, telephone number, and 24-hour telephone number of the emergency contact.	This information is filed with state and local agencies under EPCRA and is made available to the public and, therefore, does not meet the criteria for CBI claims.
68.160(b)(7) Program level and NAICS code of the process.	This information provides no information that would affect a source's competitive position.
68.160(b)(8) The stationary source EPA identifier.	This information provides no information that would affect a source's competitive position.
68.160(b)(10) Whether the stationary source is subject to 29 CFR 1910.119.	This information provides no information that would affect a source's competitive position.
68.160(b)(11) Whether the stationary source is subject to 40 CFR Part 355.	Sources are required to notify the state and local agencies if they are subject to this rule; this information is available to the public and, therefore, does not meet the criteria for CBI claims.
68.160(b)(12) If the stationary source has a CAA Title V operating permit, the permit number.	This information will be known to state and federal air agencies and is available to the public and, therefore, does not meet the criteria for CBI claims.

APPENDIX TO PREAMBLE—DATA ELEMENTS THAT MAY NOT BE CLAIMED AS CBI—Continued

Rule element	Comment
68.160(b)(13) The date of the last safety inspection and the identity of the inspecting entity.	This information provides no information that would affect a source's competitive position.
68.165(b)(4) Basis of the results (give model name if used).	Without the chemical name and quantity, this reveals no business information.
68.165(b)(9) Wind speed and atmospheric stability class (toxics only).	This information provides no information that would affect a source's competitive position.
68.165(b)(10) Topography (toxics only)	Without the chemical name and quantity, this reveals no business information.
68.165(b)(11) Distance to an endpoint	By itself, this information provides no confidential information. Other elements that would reveal chemical identity or quantity may be claimed as CBI.
68.165(b)(12) Public and environmental receptors within the distance.	By itself, this information provides no confidential information. Other elements that would reveal chemical identity or quantity may be claimed as CBI.
68.168 Five-year accident history	Sources are required to report most of these releases and information (chemical released, quantity, impacts) to the federal, state, and local agencies under CERCLA and EPCRA; these data are available to the public and, therefore, do not meet the criteria for CBI claims. Much of this information is also available from the public media.
68.170(b), (d), (e)(1), and (f)–(k)	
68.175(b), (d), (e)(1), and (f)–(p)	
NAICS code, prevention program compliance dates and information.	NAICS codes and the prevention program compliance dates and information provide no information that would affect a source's competitive position.
68.180 Emergency response program	This information provides no information that would affect a source's competitive position.

List of Subjects in 40 CFR Part 68

Environmental protection,
Administrative practice and procedure,
Air pollution control, Chemicals,
Hazardous substances,
Intergovernmental relations, Reporting
and recordkeeping requirements.

Dated: December 29, 1998.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, title 40, chapter I, subchapter C, part 68 of the Code of Federal Regulations is amended to read as follows:

PART 68—CHEMICAL ACCIDENT PREVENTION PROVISIONS

1. The authority citation for Part 68 continues to read as follows:

Authority: 42 U.S.C. 7412(r), 7601(a)(1), 7661–7661f.

2. Section 68.3 is amended by removing the definition of SIC and by adding in alphabetical order the definition for NAICS to read as follows:

§ 68.3 Definitions.

* * * * *

NAICS means North American Industry Classification System.

* * * * *

3. Section 68.10 is amended by revising paragraph (d)(1) to read as follows:

§ 68.10 Applicability.

* * * * *

(d) * * *

(1) The process is in NAICS code 32211, 32411, 32511, 325181, 325188,

325192, 325199, 325211, 325311, or 32532; or

* * * * *

4. Section 68.42 is amended by revising paragraph (b)(3), redesignating paragraphs (b)(4) through (b)(10) as paragraphs (b)(5) through (b)(11) and by adding a new paragraph (b)(4) to read as follows:

§ 68.42 Five-year accident history.

* * * * *

(b) * * *

(3) Estimated quantity released in pounds and, for mixtures containing regulated toxic substances, percentage concentration by weight of the released regulated toxic substance in the liquid mixture;

(4) Five- or six-digit NAICS code that most closely corresponds to the process;

* * * * *

5. Section 68.79 is amended by revising paragraph (a) to read as follows:

§ 68.79 Compliance audits.

(a) The owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed.

* * * * *

6. Section 68.150 is amended by adding paragraph (e) to read as follows:

§ 68.150 Submission.

* * * * *

(e) Procedures for asserting that information submitted in the RMP is entitled to protection as confidential business information are set forth in §§ 68.151 and 68.152.

7. Section 68.151 is added to read as follows:

§ 68.151 Assertion of claims of confidential business information.

(a) Except as provided in paragraph (b) of this section, an owner or operator of a stationary source required to report or otherwise provide information under this part may make a claim of confidential business information for any such information that meets the criteria set forth in 40 CFR 2.301.

(b) Notwithstanding the provisions of 40 CFR part 2, an owner or operator of a stationary source subject to this part may not claim as confidential business information the following information:

(1) Registration data required by § 68.160(b)(1) through (b)(6) and (b)(8), (b)(10) through (b)(13) and NAICS code and Program level of the process set forth in § 68.160(b)(7);

(2) Offsite consequence analysis data required by § 68.165(b)(4), (b)(9), (b)(10), (b)(11), and (b)(12).

(3) Accident history data required by § 68.168;

(4) Prevention program data required by § 68.170(b), (d), (e)(1), (f) through (k);

(5) Prevention program data required by § 68.175(b), (d), (e)(1), (f) through (p); and

(6) Emergency response program data required by § 68.180.

(c) Notwithstanding the procedures specified in 40 CFR part 2, an owner or operator asserting a claim of CBI with respect to information contained in its RMP, shall submit to EPA at the time it submits the RMP the following:

(1) The information claimed confidential, provided in a format to be specified by EPA;

(2) A sanitized (redacted) copy of the RMP, with the notation "CBI" substituted for the information claimed confidential, except that a generic category or class name shall be substituted for any chemical name or identity claimed confidential; and

(3) The document or documents substantiating each claim of confidential business information, as described in § 68.152.

8. Section 68.152 is added to read as follows:

§ 68.152 Substantiating claims of confidential business information.

(a) An owner or operator claiming that information is confidential business information must substantiate that claim by providing documentation that demonstrates that the claim meets the substantive criteria set forth in 40 CFR 2.301.

(b) Information that is submitted as part of the substantiation may be claimed confidential by marking it as confidential business information. Information not so marked will be treated as public and may be disclosed without notice to the submitter. If information that is submitted as part of the substantiation is claimed confidential, the owner or operator must provide a sanitized and unsanitized version of the substantiation.

(c) The owner, operator, or senior official with management responsibility of the stationary source shall sign a certification that the signer has personally examined the information submitted and that based on inquiry of the persons who compiled the information, the information is true, accurate, and complete, and that those portions of the substantiation claimed as confidential business information would, if disclosed, reveal trade secrets or other confidential business information.

9. Section 68.160 is amended by revising paragraphs (b)(1), (b)(7), and

(b)(12) and adding paragraphs (b)(14) through (b)(18) to read as follows:

§ 68.160 Registration.

* * * * *

(b) * * *

(1) Stationary source name, street, city, county, state, zip code, latitude and longitude, method for obtaining latitude and longitude, and description of location that latitude and longitude represent;

* * * * *

(7) For each covered process, the name and CAS number of each regulated substance held above the threshold quantity in the process, the maximum quantity of each regulated substance or mixture in the process (in pounds) to two significant digits, the five- or six-digit NAICS code that most closely corresponds to the process, and the Program level of the process;

* * * * *

(12) If the stationary source has a CAA Title V operating permit, the permit number; and

* * * * *

(14) Source or Parent Company E-Mail Address (Optional);

(15) Source Homepage address (Optional)

(16) Phone number at the source for public inquiries (Optional);

(17) Local Emergency Planning Committee (Optional);

(18) OSHA Voluntary Protection Program status (Optional);

10. Section 68.165 is amended by revising paragraph (b) to read as follows:

§ 68.165 Offsite consequence analysis.

* * * * *

(b) The owner or operator shall submit the following data:

(1) Chemical name;

(2) Percentage weight of the chemical in a liquid mixture (toxics only);

(3) Physical state (toxics only);

(4) Basis of results (give model name if used);

(5) Scenario (explosion, fire, toxic gas release, or liquid spill and evaporation);

(6) Quantity released in pounds;

(7) Release rate;

(8) Release duration;

(9) Wind speed and atmospheric stability class (toxics only);

(10) Topography (toxics only);

(11) Distance to endpoint;

(12) Public and environmental receptors within the distance;

(13) Passive mitigation considered; and

(14) Active mitigation considered (alternative releases only);

11. Section 68.170 is amended by revising paragraph (b) to read as follows:

§ 68.170 Prevention program/Program 2.

* * * * *

(b) The five- or six-digit NAICS code that most closely corresponds to the process.

* * * * *

12. Section 68.175 is amended by revising paragraph (b) to read as follows:

§ 68.175 Prevention program/Program 3.

* * * * *

(b) The five- or six-digit NAICS code that most closely corresponds to the process.

* * * * *

13. Section 68.180 is amended by revising paragraph (b) to read as follows:

§ 68.180 Emergency response program.

* * * * *

(b) The owner or operator shall provide the name and telephone number of the local agency with which emergency response activities and the emergency response plan is coordinated.

* * * * *

[FR Doc. 99-231 Filed 1-5-99; 8:45 am]

BILLING CODE 6560-50-P